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Kentucky Court of Appeals.

MARTHA E. PIATT, *Executrix of*
Jacob W. Piatt, deceased,

versus

JOHN H. PIATT, *et al.*

} APPEAL FROM
BOONE CIRCUIT COURT.

ARGUMENT FOR PLAINTIFF.

JOHNSTON & CARROLL, *of Counsel for Plaintiff.*

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KENTUCKY COURT OF APPEALS.

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ARGUMENT FOR PLAINTIFF.

"IN THE NAME OF THE FATHER, THE SON, AND THE HOLY GHOST, AMEN! I, Jacob W. Piatt, formerly of Cincinnati, Ohio, but now of Federal Hall, Boone County, Kentucky, being of sound and disposing mind and memory, and desirous of settling my worldly affairs, do make and publish my last will and testament, as follows, to-wit:

"First. It is my will that all my just debts and funeral charges be fully paid.

"Second. It is my will that my wife, Martha E. Piatt, shall have and enjoy in all my estate and property, whether in Ohio, Kentucky, Illinois, or elsewhere, that portion thereof to which she is entitled by the laws of the several States wherein said property is situated.

"Third. I give and bequeath to my daughter, Caroline C. Jenkins, of Baltimore, the only surviving child of my marriage with Caroline Canfield, for and during her natural life, a lot of ground, with the improvements thereon, thirty feet square, on the south side of New Street, about sixty feet east of Sycamore Street, in the city of Cincinnati, Ohio, whereon is erected a three-story brick dwelling house: After the death of my said daughter Caroline, her children, or other issue, if any such shall survive her, to take the

“same in fee simple: But in case she shall die without children or issue surviving her, then said lot, with the appurtenances, is to go into the bulk of my estate, and be disposed of as hereinafter provided; said lot and appurtenances being all the portion I intend to give my said daughter.

“Fourth. I give and bequeath to my son, John H. Piatt, the only surviving child of my marriage with Harriet Lanman, my entire Law Library, now in his possession, in the city of Cincinnati, Ohio; this being all I intend to give to my said son.

“Fifth. I give and devise to my wife, Martha E. Piatt, and to her successor or successors, as hereinafter provided, all the rest and residue of my estate, real, personal and mixed, in Ohio, Kentucky, Illinois, or elsewhere; with all the rents, profits and issues thereof; in trust, nevertheless, for the maintenance, education and endowment of our seven children, Mary Arabella Piatt, Benjamin M. Piatt, Charles D. Piatt, Eugenia W. Piatt, Louisa M. Piatt, Jacob W. Piatt and Edward C. Piatt, or the survivors of them, in equal proportions, share and share alike; with power to sell and convey such parts of said real estate as may be necessary to defray the expense of educating our said children, but for no other purpose; and that she and her successors, as hereinafter provided, shall have full power and authority to apportion and set off, by deed or otherwise, the said estate to our said children, as they shall come of lawful age, according to her or their sense of justice and equality; the homestead farm, at Federal Hall, to be set off to one of our sons, who shall choose the occupation of a farmer; and until the time for making such disposition of said farm shall come, it is my will that it should be used and occupied as a homestead and residence for my family, where my wife may reside, and my children may be brought up free from the contaminating influences of towns and cities.

“Sixth. In order to the better execution of this my will, I hereby constitute and appoint my said wife the guardian of our said seven children, with full power to do in their behalf any and all acts which may lawfully be done by guardians appointed by Courts having jurisdiction of such matters.

“Seventh. Should my said wife marry or die before the
 “objects of this trust are accomplished, it is my will that her
 “relations as trustee of my estate, guardian of my children,
 “and executor of this my will, shall cease, and the Rev.
 “George A. Carrel, Bishop of Covington, is hereby chosen
 “and appointed to take upon himself the trust, guardianship,
 “and execution of my will, as aforesaid: and, in the event of
 “the death, neglect or refusal of the said Carrel to accept
 “said trust and guardianship, it is my will that the Courts
 “having jurisdiction of the subject in the several States
 “wherein my property is situated, shall make such appoint-
 “ments of trustees, guardians and administrators, as may be
 “proper for the purpose of carrying into effect the purposes
 “of this my will.

“Eighth. I hereby constitute and appoint my faithful and
 “beloved wife, Martha E. Piatt, executrix of this my last will
 “and testament; and I hereby revoke and annul all other and
 “former wills by me made, and publish this as my only true
 “last will and testament.

“In witness whereof, I hereto fix my seal and subscribe my
 “name, in the presence of Charles O’Brien, Benjamin M.
 “Piatt, jun., and William Johnston, this nineteenth day of
 “May, in the year of our Lord, 1857.

“JACOB W. PIATT. [SEAL.]

“Signed, sealed and published, as the last
 “will and testament of Jacob W. Piatt, in
 “the presence of us, who, at his request and
 “in his presence, and in the presence of
 “each other, have hereto subscribed our
 “names as witnesses.

“WILLIAM JOHNSTON,

“BEN. M. PIATT, JR.,

“CHARLES O’BRIEN.”

Thus runs the last will and testament of Jacob W. Piatt;
 and the question now before the Court is, Whether this is his
valid last will and testament.

And this involves another question, Whether the testator
 was of sound mind when he executed this will.

I.

In the contest of a will, the mere opinions of witnesses, that the testator was insane, or deficient in capacity to make a will, are conclusive of nothing. The witnesses must state the facts and circumstances—the words spoken, and the acts done, by the testator—on which their opinions are founded; and it is the province of the Jury, or of the Court, in view of all the proofs, to form their own opinion of the testator's capacity:

Whitenack vs. Stryker, 1 *Green's Chancery R.*, 8; *Harrison vs. Rowan*, 3 *Wash. C. C. R.*, 580; *Harrison vs. Rowan*, 3 *Wash. C. C. R.*, 587; *Sloan vs. Maxwell*, 2 *Green's Ch'y R.*, 563; *Stevens vs. Vancleve*, 4 *Wash. C. C. R.*, 262; *Potts et al. vs. House*, 6 *Georgia R.*, 324; *Duffield vs. Robeson*, 2 *Harrington*, 375–385; *Clark vs. Ohio*, 12 *Ohio R.*, 483; *Pool vs. Richardson*, 3 *Mass.*, 330; *Needham vs. Ide*, 5 *Pickering*, 510; *Gibson vs. Gibson*, 9 *Yerger*, 329; *Martin vs. Teague*, 2 *Speers*, 266; *Reed's Will*, 2 *B. Monroe*, 79; *McDaniel's Will*, 2 *J. J. Marshall*, 337; 1 *Jarman on Wills*, pages 78, 79; 3 *Starkie on Evidence*, 1707, Note 2.

This rule of law accords so well with common sense, and is so well sustained by authority, that it might seem useless to say one word by way of illustration; but, as it will be reverted to frequently in the course of the argument, it may be proper to make a few observations upon it. It is a rule applicable to every contest in a Court of justice; but in cases affecting the soundness, or unsoundness, of the human mind, it applies with peculiar power. Witnesses must give facts—Courts must give opinions.

The weakest person, who possesses a sense of moral obligation, can make a statement of facts; while the question whether a person is sane or insane, is often too recondite for the most skillful physician to determine. At last, one's capacity to transact business must be decided, experimentally, by reference to the manner in which he conducts it. The man who manages his business with caution, sagacity and success, must be taken to have capacity for business, whatever may be his eccentricities, and whatever the opinions of witnesses may be as to whether he is crazy or not. The in-

stances must be stated wherein he was led by insane delusion to acts of folly—wherein he mismanaged his business because his understanding had failed—wherein he was defrauded of his property for a want of a just appreciation of its value—wherein he disinherited a child because, through dotage, he had forgotten there was such a child—wherein his weak mind was overpowered by a stronger mind so as to destroy his free agency—wherein he gave his property to strangers, believing, through insane delusion, that his own children were bastards—wherein he behaved himself like a maniac or an imbecile and violated the known laws of his character.

If we do not adhere to this rule, we are at sea, enveloped in darkness, without a star to guide us.

In a city like Cincinnati, where human life is so strangely diversified—where four different languages are currently spoken—where four medical colleges, and five schools of physic, teach adverse theories—where twenty denominations of Christians, and two denominations of Jews, teach conflicting doctrines—where half a dozen sects of infidels dispute the best mode of getting along without any religion at all—where twenty newspapers advocate an infinity of irreconcilable notions, and where *free discussion run mad* holds forth on all days of the week, on free thought, free labor, free territory, free trade, free love, and every other free thing that imagination, in her giddiest mood, ever conceived of—it can not be, in the nature of things, but that one portion of society should deem another portion crazy; and it would require no great effort, if we should receive the *mere opinions* of witnesses, to prove that the best of us were insane.

There ought to be an exception made here. There is, in every community, a nice man; not necessarily honest or sincere, but intensely decent, and always on his good behavior; a man who, from very dullness, seems to be profound—always grave, and never tired being wise. This man is never suspected of insanity. But the man of genius, who looks through the follies of mankind, and speaks the truth too truly—who, when he sees the leading humbug of the day, inflated with the breath of false applause, swelling into a mountain, thrusts into it the spear of Ithuriel—the man of genial spirit, who thoughtlessly rollicks and jests and laughs

with his friends—the philosopher who, like Solomon, finds by experience that “in much wisdom there is much grief,” and like Solomon, for the while, “gives himself to madness and folly”—but, more than all, the man of keen and withering sarcasm, like the testator, who, regardless of the opinions of mankind, says what he thinks in strong, and sometimes extravagant, language: all these are so often above, or below, or beyond, the comprehension of the masses, that they may easily be proved insane, if you will take the *mere opinions* of witnesses, without requiring them to state the acts which were done, and the words which were spoken, and under what circumstances, from which they formed their opinions. It often turns out, as will be shown in this case, that when the witness comes to place his opinions and the facts from which he formed them side by side, instead of proving the testator insane they prove the witness ignorant. Again, it often happens, as will also be apparent in this case, that witnesses form opinions from what others have told them—and, from ignorance of the law of evidence, swear to those opinions with as clear a conscience as if they were facts within their own personal knowledge.

There is no safe rule but that laid down in the law, to require the facts to be stated, and allow the Court or Jury to form such opinion as the facts may warrant. The wisdom of history stands not on the bare assertion of the historian, but on the facts which he relates. All historians have felt this. When the Babylonish king was punished with the insane belief that he was a beast, the historian does not content himself with informing us, as a matter of opinion, that Nebuchadnezzar was a monomaniac, and believed himself an ox, but he gives us the facts as to the effects of his malady. He informs us that he was driven out from the habitations of men—that he ate grass like an ox—that his body was wet with the dews of heaven, till his hair became like eagle’s feathers and his nails like bird’s claws.

So, too, in the account given us, in the Gospels, of a demoniac. The Evangelist does not merely tell us he was a madman, possessed of devils. He tells us that he was “exceedingly fierce, so that no man might pass that way; that he “had often been bound with fetters of iron, and brake them

“asunder—that he wear no clothes; but day and night was “among the tombs, crying and cutting himself with stones.” Let us follow this safe old rule, and stand by the facts.

II.

Where persons are called to aid in the preparation, and witness the execution, of a will, such persons have a greater responsibility upon them, are more likely to direct their attention to the true condition of the testator’s mind, than others; and more reliance ought to be placed on their testimony than that of ordinary observers:

Whitenack vs. Stryker, 1 *Green’s Ch’y R.*, 8; *Sloan vs. Maxwell*, 2 *Green’s Ch’y R.*, 563; *Harrison vs. Rowan*, 3 *Wash. C. C. R.*, 580; *Stevens vs. Vancleve*, 4 *Wash. C. C. R.*, 262; *Duffield vs. Robeson*, 2 *Harrington*, 375; *Turnbull vs. Gibbons*, 2 *Zabrisca*, 133; *Pool et al. vs. Richardson*, 3 *Mass.*, 330; *Ex parte Holyland*, 11 *Vesey, Jur.*, 11; *Gaskell vs. Harman*, 11 *Vesey, Jur.*, 494; 3 *Starkie on Evidence*, 1707, Note 2; 1 *Jarman on Wills*, 72, 73.

This principle of the law is also fully sustained by authority and accords with the common conscience and understanding of mankind. The making of a will is always a subject of serious consideration: but when one makes his will in his last illness, it is doubly serious. The mind, whether we will or not, enters into a train of thought which does not belong to the every-day concerns of life. The witness involuntarily says to himself: “I am engaged in a responsible, a solemn duty. This man is about to make a final disposition of his property, according to his sense of what is best for his family. If he be of sound mind, he, of all others, knows what is best, and has a right to do what he pleases with his own. I am to witness this solemn act to-day; and, in a few days hence, I shall be called on, in a Court of Probate, to put my testimony on record, that this man is of *sound mind*—that he knows what he is doing, and is doing it freely. The validity or invalidity of this will may turn on my testimony. Justice to my friend, who has called me to his aid—justice to his wife and children, whose fortunes may be affected by this act—justice to the Court, wherein this will is to be proved—and, above all, justice to myself, as an honest man,

“require that I should notice carefully whether this man is in “a condition of mind to make a rational disposition of his “property.” So reasoning, no honest man could be a party to such a transaction unless he believed the testator to be of sound mind.

In this case, substantially, there were four witnesses, though but three of them subscribed their names to the will. Charles O'Brien was there, by accident, on other business. He was called in without knowing for what purpose; so that it is not pretended that he scanned the testator's mind with reference to the future consequences of making a will, or that he judged of his capacity by any other test than that he conversed on matters of business and matters of religion as he formerly did, and that the witness observed no change in him. Not so, as to the other three. They all knew perfectly well what was to be done; and, if they are to be believed, not one of them would have performed the part he did, if he had doubted the testator's capacity. The venerable father had gone, the day before, to Cincinnati for an attorney to draft the will. This, and this alone, was his business. As an honest man, he would not have undertaken this task for his son if he had doubted his capacity. What were his opportunities of knowing the condition of his mind? He had been with him several weeks during his suffering from the wound in his knee. He had visited him once in the meanwhile; and now, he had been with him constantly for a week, settling some important accounts: so that he had the fullest opportunity of testing his capacity. But his own words are most expressive. “At “the time he made his will, I had been there a week, I think. “During that period we were engaged making a settlement. “The settlement was closed, I think, on the 21st of May. * “* * * I considered him in a situation to do business. I “would not, of course, have settled with him, if I had thought “he did not know what he was at. I considered him as capable of doing business as he had ever been. * * * We “settled a very important account, and he appeared to know “all about it. * * * He was in his right mind; or, as “I stated before, if I had thought he was not in his right “mind, it would have made an impression on my mind, that

"I would have interfered. I thought he was in a sound disposing mind." Here is testimony within the rule of law. The witness states the facts from which he formed his opinion and the opinion side by side.

As to Benjamin M. Piatt, junior, he lived, at this time, within a mile of the testator, and was with him almost daily; not as idle spectator, but making himself useful. He was with him, from the time he was wounded to the time of his death, more than any other man; conversed with him by day and watched with him at night more than any other man. The testator talked with him freely and frequently about business, and about the practice of the law for which he was preparing himself; and, with the freedom of a near kinsman, gave him his advice and examined him on his studies. He watched with the testator the night before the will was made, and conversed with him about making the will in the morning. The testator informed him he was going to make his will that day—that Mr. Johnston had come there to draft it, and asked him to stay and be a witness. When he informed the testator that he must go home, he requested him to return in the evening in time to witness the will. He did return before the draft was completed, saw the testator read over the rough draft and make the alterations he desired: and when it was engrossed, he saw him read it again and heard him declare, as he returned it to the draftsman, that it was all right—saw him call the witnesses around him, and, in their presence, execute the will. Here, then, are some of the facts from which this witness formed his opinion of the condition of the testator's mind, and the result is thus stated by him with truthful simplicity: "It is my belief that, at the time of the execution of this will, Jacob W. Piatt was of sound mind and disposing memory. I thought so at that time, or I could not have consented to sign my name, or to have appeared at all as an attesting witness to the will."

The draftsman of the will is the other subscribing witness; but, for certain reasons, his testimony must pass without commentary, further than this: that, having, according to the testimony of the other witnesses, received the instructions from the testator—drawn up a rough draft, and submitted it for inspection and correction—engrossed the instrument, after

it had been read and revised by the testator—submitted the engrossed draft for a second reading and inspection by the testator, and, after he had pronounced it all right, and executed it, then signed his name as a witness: after all this, if he erred in his judgment of the condition of the testator's mind, it must have been the result of incorrigible dullness.

But did these witnesses, who were present and took a part in making this will, know enough of the previous life, habits, peculiarities and general character, of the testator, to make them competent judges of the condition of his mind at this time? To judge whether one's mind has undergone changes, the witness ought to be acquainted with its natural, original types in its normal condition. He is a bad witness to prove whether a landmark has been removed, who does not know where it originally stood. The minds of men are not all wrought on the same model. Nor is any one mind exactly balanced on itself, so as to turn uniformly round the same center. Every man is, to some extent, eccentric; every mind has something peculiar to itself, by which the student of phrenology distinguishes it from other minds. These normal peculiarities must be known in order to give a rational judgment whether the mind is shaken from its bearings, or drawn by disturbing causes from its natural motion. None but the intimate acquaintances of the man can possess the requisite knowledge for such a task.

It is worthy of observation at this point, that among those who were present, by the testator's own choice, to aid in preparing and executing this will, there is not one man with whom he had not been acquainted for eighteen years; nor one man who did not know him thoroughly.

If any three men ought to have known the testator better than others, they were these three. His father, Benjamin M. Piatt, senior, who had watched his movements from the hour when he first opened his eyes on the light till the hour when he closed them in death; his kinsman, Benjamin M. Piatt, junior, a well-educated, observing and intelligent young man, who had been his student, his familiar friend and his nurse; and his legal adviser, who had often times struggled with him in the conflicts of the legal profession, and often been closeted with him in consultation on professional business.

The subscribing witnesses, say the books, are placed by law around the testator, to guard him against imposition and to judge of his capacity—and their testimony is not to be lightly set aside.

One reflection more: The testimony of the subscribing witnesses, being directed to the exact point of time at which the will was executed, gives it an additional importance; and this leads us directly to the consideration of the third point in the case.

III.

Wherever the capacity of a testator to make a will is called in question, the condition of his mind *at the time the will was executed* is the material and turning point of the inquiry. If he was of sound mind at that particular time, it is conclusive of the validity of the will, so far as it is affected by the question of capacity, no matter what his condition of mind may have been before or after:

Whitenack vs. Stryker, 1 *Green's Ch'y R.*, 8; *Harrison vs. Rowan*, 3 *Wash. C. C. R.*, 580; *Stevens vs. Vaneleve*, 4 *Wash. C. C. R.*, 262; *Duffield vs. Robeson*, 2 *Harrington*, 375; *Singleton's Will*, 8 *Dana*, 317; *Jarman on Wills*, page 65; *Cartwright vs. Cartwright*, 1 *Phillips*, 100; *Williams on Executors* (2d Am. Ed.), 17; *Swinburn*, pt. 2, sec. 3, pl. 3; *Hall vs. Warren*, 9 *Vesey*, 610; *Brook vs. Lockett*, 4 *Howard (Miss.)*, 459; *Clark vs. Fisher*, 1 *Paige*, 171; *Jackson vs. Vandeusen*, 5 *Johnson*, 144; *Boyd vs. Eby*, 8 *Watts*, 66; *Kinlock vs. Palmer*, 1 *Const. (S.C.) R.*, 225; *Griffen vs. Griffen*, *R. M. Charlt.*, 217; *Halley vs. Webster*, 21 *Maine*, 462; *Goble vs. Grant*, 2 *Green's Chancery R.*, 629.

As a proposition of law, this requires no argument. If the proof showed that, for years before the will was made, the testator had been utterly insane and incapable of any degree of reflection—and that, the next day after it was made, he was in the same melancholy condition—yet, if it was satisfactorily proved that he enjoyed a *lucid interval* for a sufficient length of time to call to mind the objects of his bounty, to remember the property he had to bestow, and to understand his own plan of distribution, it would be sufficient. But the rule need not be carried so far in this case. The proof shows that Mr. Piatt's ordinary condition was sanity; and the ques-

tion is, whether, from any cause, he was out of his right mind when the will was made. The exact concurrence, as we have already seen, of all the subscribing witnesses, and of all other persons who saw him on that day, that his mind was as sound as it ever had been, imposes the burthen upon the other party of showing a condition of mind, before and after the execution of the will, inconsistent with the idea that his mind was sound at that point of time.

That part of the testimony adverse to the will, which comes nearest to this important point of time, is that which begins on the 21st of May, two days after the will was executed, and comes down to the time of the testator's death, on the 28th. Here is an interval of seven days for observation; and let us see how many facts and circumstances the adverse witnesses can recount, within that time, inconsistent with the sanity of the testator on the 19th of May, at seven o'clock in the evening, when the will was executed.

There are four adverse witnesses, who speak as to this interval of time: Dunn Piatt, Louise Piatt, Dr. Blaisdell and Dr. Murphy. It may be well to examine the testimony of each of these witnesses separately, and compare them together, to see how far they sustain each other—how far they are sustained by the testimony of other witnesses—how far their testimony in Court is sustained by their own conduct out of Court—and whether they acted toward the testator as honest people, in their own right minds, act toward a man who, from insanity or imbecility, is incapable of transacting business.

But, first of all, before considering the testimony of these four witnesses, or of any others, touching the condition of the testator's mind, or as to the facts on which their opinions are founded, we ought to know something of the natural characteristics of that mind in its normal condition; and if he had, naturally, any strongly marked traits of character, we ought to know what they are.

FIRST.—*He was very irritable, and easily provoked to anger; and, when angry, could not control his temper.*

Thomas K. Smith says: "He was irascible in temper—a defect which became much aggravated by his physical ailments." And, when he threatened to burn his books, "he was excited and furious in his conversation."

Dr. Mudd says: "Mr. Piatt's general conduct toward his family was that of a very kind and indulgent husband and father; but, being of a very excitable temper, I have known him occasionally to become very much exasperated at the young ones for faults, such as running out into the streets, &c., and now and then to punish them quite severely."

Mr. Van Matre says: "He was a man usually very polite in his intercourse with men; but I have known him suddenly and unexpectedly to fly into a furious passion, and seem extremely irritable for a few seconds."

Mr. King says: "He was, at times, unmeasured and violent in his temper and feeling:" and other witnesses testify to the same effect.

SECOND.—*He was, when excited, exceedingly rash, and extravagant in the use of language; often going beyond what he would have either thought or said on sober reflection.*

Judge Storer says: "He was impulsive in his feelings, sometimes exceedingly rash in his expressions, which I always supposed was the result of temporary excitement, rather than studied or intentional."

Mr. Rairden says: "I have heard him say he would obey the direction of his priest, in any thing they should direct him, even if his own opinion should be against it. This was in a moment of controversy, when he had got a little out of humor, and I did not think he meant what he said."

Mr. Parry says: "In his public speeches he was always a little excited, and went ahead of what the resolutions embodied. He was not considered safe as a public speaker. He was too extreme. This was always the character of the man, while I knew him in politics, about 1833 and 1834."

Of the same character is the declaration sworn to by Mr. Kessler: "*He became excited, and said that the Protestant version of the Bible contained forty thousand lies, and that we intend to drive it out of the public schools.*"

Such, too, is the character of several passages in Mr. Caldwell's report of one of his stump speeches on the school question.

THIRD.—*He was very sarcastic and ironical in his modes of expression, and was somewhat unsparing in the use of this talent.*

Judge Van Hamm says: "He was, unfortunately for his own comfort and peace, remarkably sarcastic."

Louise Piatt says: "Mr. Piatt had great powers of sarcasm, and was certainly unsparing in the use of them:" and other witnesses concur in this view of his character.

FOURTH.—*He had extraordinary powers of the will, and was ardent and impetuous in the pursuit of whatever he engaged in.*

Judge Parker says: "He was very ardent, and apt to see "but one side of a case."

Judge Van Hamm says: "His mind was remarkably active, and he was very persevering in always endeavoring to carry his point. He never gave up a point till he was compelled to by being overruled by the Court; and hardly then."

Rev. Edward Purcell says: "His prominent characteristics were, great energy in whatever he undertook—great determination to carry out what he thought was correct."

Mr. Van Matre says: "I considered him a man of impetuous disposition, and a strong will; and not easily turned aside from his purpose."

Mr. Chidsey says: "He was a man of very great perseverance and activity. If he set himself about accomplishing an object, he would do it if it killed him:" and this is the general tenor of the testimony. To these should be added:

FIFTH.—*Mr. Piatt was, in the latter part of his life, decidedly a religious man, honestly believing the doctrines and approving the usages of the Roman Catholic Church, of which he was a member.*

These qualities should be known in advance, so that, when they are referred to hereafter, they may not be total strangers to us, nor we to them.

So that, when we are informed that he was very angry with his son for refusing to carry a package, or for causing his vote to be challenged at an election, we may remember that he was naturally irritable and easily provoked to anger, and, when angry, could not govern his temper.

So that, when we are informed that, in a controversy with Mr. Kessler about the use of King James's Bible in the public schools, "he became excited, and said that it contained

"forty thousand lies," we may remember that naturally, when excited, he was "exceedingly rash" and extravagant in the use of language, often going beyond what he would have either thought or said on sober reflection.

So that, when we are informed that he ridiculed his son for going to hear swaddlers preach, and snubbed his pretty sister-in-law for meddling with his will, we may remember that, naturally, he was very sarcastic and ironical in his modes of expression, and was somewhat "unsparing in the use of this talent."

So that, when Dr. Murphy is astonished that he should be out on his crutches superintending his buildings, when, in his opinion, he ought to have been in his bed, we may remember that, naturally, he had extraordinary powers of the will, and was ardent and impetuous in the pursuit of whatever he engaged in—that, as Mr. Chidsey says, "if he set himself about accomplishing an object, he would do it if it killed him."

So that, when he is condemned as a religious maniac, we may remember that he was a religious man, attached to the Roman Catholic Church, and inquire whether, in his faith and practice, he went beyond the standards of his church, or the teachings of the Holy Scriptures.

With this clue in our hands we may safely tread all the windings of the mighty labyrinth in which the ingenuity of counsel and the ignorance or willfulness of witnesses have involved this case, and come again into open day, without confounding eccentricity with insanity or religion with fanaticism.

Another preliminary remark as to some of the lights by which we are to travel. Jacob W. Piatt was not without enemies among his kindred. Mr. Runkle testifies to some ill feeling between him and his uncle Abram and the heirs of his aunt Nancy Dunn. The nature of this feud is explained in other parts of the testimony. Abram and the Dunn heirs had brought a suit in chancery against Nicholas Longworth and Benjamin M. Piatt, as administrators of John H. Piatt, and against Jacob W. Piatt as a purchaser at administrator's sale. This suit involved an immense amount of property, and a great deal of feeling. This was the case alluded to

by Dr. Harding, in which Dunn Piatt and others urged the taking of his brother's deposition, and by Mr. Johnston, in which the testator sent a message to Longworth and his counsel advising them to take his deposition. The counsel thought there was a good defense, and so advised; but the good old man, Benjamin M. Piatt, wishing, as he expressed it, to die in peace with his brother, and his sister's children, resolved to compromise the case for himself and his son Jacob. The terms of this compromise were settled before Jacob's death, though not carried out till afterward. Jacob refused to give any advice as to the compromise, on the ground that he had received from his father all he expected; so that the compromise, if made, would be at the cost, indirectly, of his brothers and sisters, and their heirs, who would be expecting the residue of his father's estate. Dunn Piatt opposed the compromise to the last, but the father persisted in consummating it, by conveying to his brother Abram and the Dunn heirs property in Toledo, worth from \$20.000 to \$30.000.

Estimating this property at \$25.000, it was an indirect tax of \$5.000 each on the remaining branches of Benjamin M. Piatt's family: on the Runkle family \$5.000; on Mrs. Worthington \$5.000; on Mrs. Thomas K. Smith \$5.000; on Abram S. Piatt \$5.000; on Dunn Piatt \$5.000. The old man had a right to do what he pleased with his own, and exercised this right without regard to the future interests of his children. In his view, this conveyance was "a peace offering." In the view of his children, it was "a whole burnt offering"—a sacrifice, at their expense, to purchase peace to Jacob and security to his estate.

Here originated the idea that Jacob had more than his proper share of influence with his father. Here originated the idea that the father was in his dotage and unfit to be a witness. Here originated a relentless warfare on the estate and will of Jacob W. Piatt. Here they gather around Dunn Piatt, as their leader, to prove, if it may be done, that a man, most remarkable for his common sense, had not mind sufficient to make a will. Here they stand around the testator, like magnifying mirrors, to exaggerate, by reflection, every act done and every word said into Brobdignagean proportions,

and to bewilder and confound every body by the boldness of their assertions.

Dunn Piatt was not present when the will was made and did not see the testator till he came to his house on Broadway, two days afterward. He says: "At that time he was *"totally prostrated, mentally and physically,* from the disease of *"which he died."* This language is not only highly figurative, but highly extravagant; so much so, as to impair its own force and lessen one's confidence in other parts of his testimony. To be *prostrated*, according to the English standards, means to be "laid at length," "laid flat," "thrown down," "destroyed." Surely this was not literally true, either of Mr. Piatt's body or mind; nor was it, as we shall see, figuratively true. The witness has not left us to suppose, that he meant merely that the testator was weak and sick in body and feeble in mind. The prostration of which he speaks, was not partial or limited—not that degree of disablement which one man might notice and which might escape the observation of another. It was *total*: "he was *totally* prostrated." This sweeping declaration brings the witness directly in conflict with TEN other witnesses, whose opportunity of knowing Mr. Piatt's condition was equally good and who are, in all respects, as worthy of belief as he, and who state specific facts inconsistent with the extravagant idea of *total* prostration, mental and physical.

James McCallion, the carpenter, accompanied Mr. Piatt on his way, as far as Lawrenceburg, to select a lot of lumber which he purchased at that place. Warren Tate sold him the lot of lumber and observed the care and prudence with which he bargained for it. Rev. Edward Purcell saw and conversed with him at his own house. Dan. Riley saw him at his stable, and heard him converse on business. Archbishop Purcell saw him, at his brother Dunn's house on Broadway, and conversed with him about his will. Judge Tilden saw him in a periodical store, and conversed with him about his health and other topics. Rev. Charles Driscoll saw him at Dunn's, and "was closeted with him for two hours." His own father accompanied him from Federal Hall to Cincinnati, and had a great deal of conversation with him—the father endeavoring, without success, to persuade the son to change

his *will*, and the son endeavoring, without success, to persuade the father to change his *religion*. Benjamin M. Piatt, jr., accompanied him from Federal Hall to Cincinnati—went with him from place to place in the city, and accompanied him home again to Federal Hall.

If he had been *totally* prostrated, both mentally and physically, some one of these TEN witnesses would have discovered it. But not one of them discovered anything of the sort—all of them thought his mind as clear as it had ever been. In addition to their opinions, founded on the facts, we have their acts in relation to him, which speak even louder than their words. Mr. Tate did not hesitate to deal with him and sell him a lot of lumber, for which he bargained sagaciously. His father and his mother and Archbishop Purcell endeavored to persuade him to make a new and different will from that which he had already made—which, as honest people, they could not have done, if they had not believed him competent to make a will.

Moreover, when all the testimony of all that he said and all that he did, from the time he left Federal Hall till he returned thither again, is carefully sifted, it will not be found that he did, or attempted to do, one foolish act, or that he uttered one foolish word all the while; unless, indeed, they were acts of folly to try Dr. Blaisdell's baths, and take Dr. Murphy's medicines; or, that he uttered words of folly when he made his last appeal to his father on the subject of religion. It will be found that, in the narrative of facts, both Dunn Piatt and his wife limit his acts of insanity to this one occurrence, which shall be noticed in its place.

Dunn Piatt, then, is not to be relied on implicitly in his sweeping assertion, that the testator at this time was *totally prostrated*, mentally and physically.

But let us bring on the doctors, and see whether they sustain this broad assertion of Dunn Piatt. Dr. Blaisdell expresses an opinion that his mind was not in condition to transact important business. But what facts does he state? He does not pretend to have seen him do, or attempt to do, one foolish act; except, that he thought strange that he came to his house, from the depot, in an express wagon instead of a coach. It must be admitted that it would have

been more respectful to the Doctor, and more creditable to his establishment, if he had come in a coach. But when we consider Mr. Piatt's character for frugality and primitive simplicity, there is nothing in this act indicating insanity; and, if there was, it proves too much; it proves the whole bevy of them to have been equally insane—his father, mother, cousin Ben and all. The doctor says Mr. Piatt was absent-minded and incoherent in conversation; but he can not recollect a sentence nor a word from which he drew this inference. He judged mainly by his exceeding feebleness and helplessness of body; and it is well calculated to weaken one's confidence in his conclusions, when it is seen how badly he remembers the facts. He says, in speaking of his visits to the baths: "The gentleman came to my house with him every time Mr. Piatt came. He could not come alone. He could not walk a step alone. * * * I did not consider it safe for him to be about, and should not have been surprised if he had fallen down dead at any moment."

Now we know, from the proof, that, sick and weak as Mr. Piatt was at this time, he was able, before he left home, to walk about on his crutches and oversee his workmen; and we have the statement of John H. Piatt, the principal contestor, in a letter to his sister Belle, that the trip to the city improved his condition. We have the proof, that, when in the city, he walked with his crutches from his carriage to Archbishop Purcell's house and back again; that he went up stairs to the baths and came down again, from time to time, without the aid of any one; that he was seen, going on his crutches, by Judge Tilden and Dan. Riley; that, when he landed at his farm, on his return home, he walked up the steep river bank without aid—and so on: so that the Doctor's memory fails him, when he says "*he could not walk a step alone.*" And when the memory is so treacherous in some things, it may play the traitor in others also.

The Doctor's diagnosis of Mr. Piatt's mind proves his judgment to be no better than his memory. He says: "His mind was in the condition to be influenced by any of his friends. I mean to say, a friend might persuade him to do a thing at one time, and another friend might persuade him to change his mind a short time after. Persons suffering with that

"disease, when it has become far advanced and the system "much reduced, have no resolution of character, but are "entirely at the mercy of those who have influence over "them." This proves how little reliance can be placed in the *mere opinions* of learned men; and how wise the rule of law is which requires even a doctor to state the facts. Let us see if the facts which others state will sustain the Doctor's opinion in this particular case. Mr. Piatt had made a will, a few days before, at his own house in Kentucky. From thence he came to his brother's house in Cincinnati, leaving his wife and all her kindred and friends behind him. Here he was surrounded by his cunning little sister Louise, and all his other friends who had foreordained that the will should not stand, with Archbishop Purcell as their ally. His mother, his father, his bishop, all assail this man, whom the doctor supposes to be "at the mercy of his friends," and all of them are unable to move him. "That which is written, is written," said the Stoics, and so said the testator. He had within him the same unconquerable will which had been his law through life, and which, like an old Damascus blade in a ragged scabbard, though covered with the dents of a hundred battles, still refused to yield. What Mr. Piatt did, and what he refused to do, in the last stages of cancer of the intestines, dissipates the theory of both Dr. Blaisdell and Dr. Murphy, that this disease produces weakness, irresolution or vacillation of the will. And when this case is added to that of Napoleon the First, who died from cancer of the stomach, and that of Col. Benton, who died from cancer in the bowels, it ought to make the doctors reflect, unless, like the immortal Sangrado, they have already "written a book."

This leads to some remarks on the testimony of Dr. Murphy, touching the same interval of time. Dr. Murphy, like Dr. Blaisdell, was not acquainted, by experience, with Mr. Piatt's constitution and general health. He had never been his family physician, or prescribed for him before. He was not now called in at his request, at the request of Mrs Piatt, or of any member of the family. He was not called to consult with Dr. Wood, Dr. Harding, Dr. Mudd, nor any one of those on whom Mr. Piatt had formerly relied, or who had formerly prescribed for him. He was called in by Mrs.

Dunn Piatt, not for the purpose of curing Mr. Piatt—for he tells us that neither he nor she had any expectation that he would recover. He was called in by the junto on Broadway, who, having failed in an attempt to make the will, next attempted to change it, and, having failed in that, last of all, are now attempting to break it. His business was to see what might be seen and tell what might be told. Be this as it may, he is an unfortunate witness. He deals too much in opinions and too little in facts, to come up to the standard of the law, which requires that even a *doctor* must state the facts on which he forms his opinion. Seeming to regard it as his business to settle the main question, he states the following conclusions of his mind: “Did n’t consider him, while I was with him, capable of making a rational disposition of his property, nor taking a survey of his estate. Do n’t think much change could have taken place in two or three days before from the nature of the disease, unless from some circumstance which did not exist in his case, so far as I know.” Again: “I believe, if appealed to by religious persons, he would have been liable to be influenced so by religious conversation, that is, by a Catholic. The first thing with him was a man’s religion. At the time of his sickness, I think, he could be easily influenced by one of his faith in whom he had confidence.” Again: “Do n’t think, when I was in attendance, he was capable of taking a rational survey of his estate and making a disposition of it.” Again: “I do n’t think he would have been capable of settling any business which did n’t agree with his religious idea of what was right.”

These are the Doctor’s conclusions; but, before he can ask other people to adopt them, the law requires him to state the facts from which they are drawn. Amongst other things, he alleges that Mr. Piatt had not common sense; and this is so favorite an idea, that he repeats it several times: and he speaks of this as of a defect natural to him, which allied itself with other causes to render him incapable of disposing of his own property. Thus, he says: “Mr. Piatt was only lacking in common sense, not deranged.” And, again: “Mr. Piatt’s intellect was weakened, besides his lack of common sense.” This is a dangerous point for the Doctor to

assail. He does not carry guns enough for such an assault. The proof is too full and clear to be got rid of, that, in all the operations of life, he was a man remarkable for common sense—so much so, that the witness who ventures such an assertion has no claim to respect for his opinions.

Another strong ground of the Doctor's—one which he refers to as an evidence of a lack of common sense—is, that "Piatt had no faith in medicine or doctors, but took medicine "from religious duty," which the Doctor construes to mean, "duty to the Church." He says: "I prescribed for him, as "for one who had no confidence in me, or in medicine, or "doctors, and he seemed to attach no importance to my prescribing for him—not to think that I was any more than "any body else." No doubt, this was hard to bear with. But what was remarkable in the case was, that the Doctor had no confidence himself. There was a perfect sameness between the Doctor and the patient in this respect. The Doctor had no expectation that Mr. Piatt would recover—Mr. Piatt had no expectation himself that he would recover. The Doctor knew perfectly well that medicine could do him no good—Mr. Piatt knew perfectly well the same thing. He prescribed, then, merely as a sham, to soothe the feelings of a dying man—and the patient lacks common sense because he has no confidence in the Doctor's shams. Mr. Piatt had that within which "feelingly persuaded him" his race was run. He had tried the skill of doctors, and the powers of medicine, long enough to know they could be of no avail; and continued to try them from a sense of duty to his friends and family: not to his Church, as the Doctor supposes—for he submitted to Blaisdell's baths to gratify his mother, and to Murphy's prescriptions to gratify his sister. The Church recommended neither the one nor the other. As for himself, his only hope was in the Physician of souls. His prospects in this life were all dashed. His sky was enveloped with clouds on every side. One only Star shone out before him, growing broader and brighter as every other light faded away. Religion with him was all; and he only lingered here that he might not only do, but suffer, the will of God. And this is what his infidel friends deemed madness—"monomania," "religious monomania."

This suggests another of the reasons the Doctor states for his conclusions. He says: "His prominent idea was a religious one. He was entirely occupied with it. When he had his first paroxysm, he had his formula, and, like other religious people, was repeating various forms of prayer, using the rosary and crying out for relief." "He was a monomaniac about religion:" and so on.

This idea of religious monomania was a sort of endemic disease in the atmosphere of Dunn Piatt's house, on Broadway, and there the Doctor caught it. He relates two conversations he had with Mr. Piatt about religion. In one of these, Mr. Piatt declared that he had not much confidence in any man who was not a member of the Church. In the other, he defended Louis Napoleon—said he was the right man for the French—denounced the French as a nation of infidels, who needed a religious ruler: and so on. These two conversations on religion were long before Mr. Piatt's illness; when, as far as we know, he was in as good health, both of body and mind, as he had ever enjoyed. They were occasions on which the Doctor was paying polite attentions to Mr. Piatt's daughter Carrie, and of course some time before her marriage. These two were the only occasions on which the Doctor ever heard him converse on religion. This is manifest from what he said in a deposition taken shortly after the death of Mr. Piatt, when every thing was much fresher in his mind than when he testified last in the case. The passage in that deposition which, by cross-examination, was transferred to the record, is this: "My conversations with him on religious matters were accidental, coming up in a general conversation. I never heard him express himself on religious matters in conversation with me *but twice*, although I have heard him during his illness express his faith to those around him in the Catholic Church." If an expression of his faith in the Catholic Church is a sufficient predicate for the opinion of a learned man that he was a monomaniac, then we understand him. If it is not, what else is there? He heard him praying on two occasions. When he had a paroxysm at Dunn Piatt's house in Cincinnati, "like other religious people, he prayed for relief:" and when he died in a terrible paroxysm, in his own house, he expired with the

language of prayer on his lips. What "formula" he used we are not informed—probably the formula of St. Stephen: "Lord Jesus, receive my spirit."

"Here endeth" the evidence of religious monomania, as far as it fell under the Doctor's own observation. He must have formed his opinion from statements made to him by others; or, he must have adopted the opinions of others ready formed: or, his own opinion has no rational foundation.

What other evidence does the Doctor give us of the testator's incapacity to dispose of his estate? He has told us that "Mr. Piatt was only lacking in *common sense*—*not deranged*." What did he hear him say? what did he see him do, evincing incapacity? He never conversed with him about business but once, and he gives us that conversation thus: "I had heard that he was going to make a will from rumor. First learned that he had made a will from himself. I asked if he had freed his mind from business and settled your affairs? He said: '*I have made my will, Doctor.*' Never had any other conversation about business." What did he do? He superintended the foundation of an addition to his house, when the Doctor thought he was too sick to attend to it.

There was not, in all the Doctor heard or saw during Mr. Piatt's last illness, one foolish word or one foolish act, nor an instance of undue influence exercised, or attempted to be exercised; and, on cross examination, he makes this acknowledgment: "My opinions, as to his impressibility and the character of the persons who could impress, is formed from his general constitution and expression, rather than from any facts, and from the fond influence and intensity of his religious feelings."

Dr. Murphy, doubtless, examined closely for the mental manifestations of Mr. Piatt, and labored hard for a rational foundation for his belief. Dr. Blaisdell was equally diligent in his discoveries and equally anxious to sustain his opinions: but Dr. Murphy did not discover that which was most prominent in the mind of Dr. Blaisdell—that Mr. Piatt was absent minded and incoherent in his conversations. Nor did Dr. Blaisdell discover that which filled the chief place in the mind of Dr. Murphy—that he was a monomaniac on the subject of religion.

This suggests one observation in advance of its proper place: If the testator was a monomaniac—the victim of one absorbing idea—it is rather remarkable that these two doctors, and two others called on the same side, should each have his own distinct theory of his mental disorder. Dr. Murphy alone, who breathed the atmosphere of Dunn Piatt's house on Broadway, took the theory of religious monomania.

IV.

Sanity is the natural condition of the human mind, and the law presumes the testator to have been of *sound mind* till the contrary is proved: and unless the facts and circumstances given in evidence on the trial show that, at the time he made the will, he was of unsound mind, a Jury has no right to set it aside:

Stevens vs. Vaneleve, 4 Wash. C. C. R., 262; *Sloan vs. Maxwell*, 2 Green's Chy R., 580; *Jackson vs. King*, 4 Cowan, 207; *Duffield vs. Robeson*, 2 Harrington, 375; *Hoge vs. Fisher*, 1 Peters, 163; *Singleton's Will*, 8 Dana, 317; *Shelford on Lunacy*, 274; *Swinburn*, 77, 78; 1 *Greenleaf on Evidence*, 42; 2 *Greenleaf on Evidence*, 689; *Evans vs. Knight*, 1 Adams, 95, 122, 598; *Jackson vs. Vandusen*, 5 Johnson, 144; *Peters vs. Bingham*, 10 New Hampshire, 514; *Chandler vs. Ferris*, 1 Harrington, 454; *Brown vs. Milleston*, 3 Wharton, 137; *Hix vs. Whittemore*, 4 Metcalf, 546; *Groom vs. Thomas*, 2 Huggard, 434; *Brooks vs. Barrett*, 7 Pickering, 98.

This, as a rule of law, requires no argument—but it suggests a more extended inquiry: how far the contesting parties have progressed in establishing, by proof, the allegation of unsoundness of mind. In addition to Drs. Blaisdell and Murphy, whose testimony has been already noticed, two other gentlemen, professing the healing art, are called, both of whom express an opinion that, several months before the testator's injury or last illness, his mind was unsound.

Dr. Ehrmann, a Homeopathist, says a great deal, but proves only this: that Mr. Piatt was weak and sick, and had lost confidence in physicians. But he does not recollect any thing that he said, or any thing that he did, evincing the want of proper understanding.

Dr. Doherty brings himself fairly within the rule of law;

he states two reasons for his opinion, and confesses that he knows of no other. 1st, Mr. Piatt, being his landlord, demanded, peremptorily, that he should keep a narrow side entrance, between him and his next neighbor, clean, when the doctor thought the tenant on the other side ought to help clean it. 2d, From an argument he had with Mr. Piatt about spiritualism, he thought Mr. Piatt believed in it, and this satisfied the Doctor that he was out of his right mind. This last ground is removed by the proof that Mr. Piatt had no serious belief in the matter.

We must, then, look a little further into the evidence.

First, let us take up the testimony of Thomas K. Smith—one of the numerous kinsfolk of Mr. Piatt to whom he stood in the relation of a father and friend, and whose property and interests he took care of when they seemed unable to take care of them for themselves. This testimony is so highly ornate and poetical, so bedecked with the flounces and furbelows of classic and mythological lore, that it irks one's conscience to mar the beauty of a thing "so fair and so frail." But duty requires it to be examined, not so much for the opinions it expresses as for the facts which it discloses, and to see how well they hold together. In one clause, speaking of Mr. Piatt, he says: "He was always an invalid while "I knew him; a victim, I believe, of chronic dyspepsia." In another, he says: "He had a strong frame and an indomitable will, and possessed a remarkable industry, always "averse to yielding to sickness." So, too, as to the time and occasion when he discovered that Mr. Piatt's mind was failing, in one clause he says: "I found Mr. Piatt, on my return "from Washington, in 1856, a *mere wreck* of his former self, "both in body and mind." In another clause, speaking of the visit he paid at Federal Hall, during Mr. Piatt's last illness, in 1857, he says: "*During that visit*, I formed the "opinion that his mental energies were shattered." So, too, as to the main question involved in the controversy, whether Mr. Piatt was sane or insane, he seems to waver; for, having informed us that, in 1856, his mind was a *mere wreck*—that, after his injury, his *mental energies were shattered*—that he is quite confident "that, for three months preceding his death, "he was a monomaniac on the subject of religion"—he comes

down and says: "There were times, certainly, when his mind "was sufficiently clear for the transaction of ordinary business—the small details of every-day life," &c.; and, "I do "not wish to be understood as expressing the opinion (and I "take my deposition, after all, a mere opinion) that J. W. "Piatt was insane or imbecile; but that he was so tortured "with physical agony, the few weeks before his death, as to "be incapacitated for a continuous train of thought upon any "one subject." Neither do Mr. Smith's actions and words agree as to the capacity of Mr. Piatt for business. After 1856, when he professes to have found him "*a mere wreck*," both in body and mind," he and his wife intrust him with difficult and important business, affecting the rights of Mrs. Smith—and this "*wreck*" takes upon himself, as attorney and next friend, this business, and accomplishes it with success. And when, in addition to former infirmities, he is suffering the hell of Prometheus, and Mr. Smith is threatened with the opposition of one of the most formidable politicians in the country, and in danger of losing his office and his all, he flies to this "*mere wreck*" for advice and comfort.

Mr. Smith do n't know what he is talking about. All, or nearly all, that he relates about the sufferings of Mr. Piatt and the condition of his mind for the last three months before his death, must be mere guess-work. He was not on the spot to witness either. Mr. Piatt was wounded on the 14th of February, made his will on the 19th of May, and visited Cincinnati on the 21st. During these three months and seven days, Mr. Smith saw him but once, and then did not watch with him, so as to witness his nightly paroxysms. He did not go there to watch with him nor to sympathize with him or his family. He had a grist of his own to grind, and that was his business. But he shall tell this part of the story himself:

"I think I visited him in Kentucky BUT ONCE after the injury to his knee and before he came to Cincinnati the last "time. * * Upon that visit, I sat with him in the evening "of my arrival till, perhaps, nine or ten o'clock, and then retired, sleeping in the adjoining room. I spent the greater "part of the next day at his bed-side."

What were the visions of Mr. Smith's head during this

night's sleep, will appear as he progresses in reply to a request to be specific in his statements:

"In answer to this question I must explain, that Mr. Piatt had been, for many years, a prominent politician—an influential and leading member of the Democratic party. I had been appointed by President Pierce, during the recess of the 34th Congress, United States Marshal for the Southern District of Ohio, in opposition to candidates supported by Senator George E. Pugh; who, upon that ground, had declared his intention of frustrating the confirmation of my appointment by the Senate. *With a view to taking counsel with Mr. Piatt in that behalf, I visited him, and DURING THAT VISIT I formed the opinion that his mental energies were shattered.*"

We now learn the topic (not the conversation, because Mr. Smith is careful not to give us one word of it)—the subject matter which occupied his time the next day at the sick man's bed-side, and from which he "formed the opinion that his mental energies were shattered."

"I knew that he took a kindly interest in me and in my affairs—that he regarded the subject matter I laid before him as one of the greatest importance to me, the place I desired to retain being one of honor and large pecuniary emolument; aside from which, there were questions mooted calculated to rouse him by arraying before him men and measures that would excite his antipathies and partialities. Yet I found it difficult for him to fix his mind even for a few moments. He continually wandered off, reverting to the subject of religion, always his first and last thought. Sectarianism and doctrinal works, the reading of which he pressed upon me at that time, *mal appropos* as it was. I left him, fully convinced that it was useless to attempt conversation with him on any matter of business—that all he had left of intellect was concentrated upon Catholicism and his desire to proselyte to that faith."

Allowing that Mr. Smith believes himself, when he says "he found Mr. Piatt, on his return from Washington, in 1856, a mere wreck of his former self, both in body and mind;" allowing the wound in his knee to have been as ghastly and dangerous as it really was; and, allowing his suf-

ferings to have been as terrible and unremitting as Mr. Smith represents them to have been: it would be entirely safe to submit the question, which was the greater madman, Mr. Smith for vexing the mind of such a sufferer with such questions, or Mr. Piatt for refusing to be vexed with them. Doubtless these men mutually distrusted each other's sanity; but, before we condemn either, let us look for a moment at the peculiar relations of each. Mr. Smith was a living politician, Mr. Piatt was a dying Christian; Mr. Smith was a candidate for Marshal of the Southern District of Ohio, Mr. Piatt was a candidate for Heaven only. In Mr. Smith's estimation, the honors and emoluments of high constable of the United States were worthy the ambition of Cæsar; in Mr. Piatt's estimation, all the titles and honors and emoluments of this world were nothing, compared with the unfading honors and the "unsearchable riches" of the world to come. Mr. Smith was shipped in a new and untried vessel, badly ballasted, with all sail crowded, ready to tempt the dangers of an unknown sea in search of baubles; Mr. Piatt had weathered out the storms of life, smelt the land breezes and saw the head-lands of immortality before him. Mr. Smith was struggling for a "slippery tenure"—a tenure at will in an earthly office; Mr. Piatt sought to secure an inheritance *in fee simple* in the land of eternal rest. If Mr. Smith had been willing to journey in the same road, and seek the same object, feeble as he was, Mr. Piatt would have taken him by the hand and helped him along. But Mr. Smith was intent on the flesh pots of Egypt.

Mr. Smith has not favored us with one sentence, or one word, which Mr. Piatt uttered during this conversation. We must take it for granted that they were foolish words on his certificate. Nor has he given us the title of one book which he advised him to read, so that we might judge whether they were good books or bad books, sectarian or unsectarian. But, knowing the object for which Mr. Smith visited the sick man—knowing that he attempted to rouse him by appeals to old antipathies—and, knowing the result of the conference, we have a right to conjecture that it ran thus: "My very dear uncle, you must rouse from this lethargy, fling away your crutches, your beads and your prayer-books, and give

your religious contemplations to the winds. I am in danger, sir, of losing my office; and, if I lose my office, I am undone forever. It is an office of high honor and large emoluments; and, if I am permitted to hold on to it, I will add a new luster to the name of your family. Besides, they are your old enemies and the enemies of your family who are opposed to me. If they triumph over me, it will be a triumph over the whole family. You owe these men a grudge, and now is your time to pay them. Your biting sarcasm, your withering invective, will drive them to their holes like mice. Senator Pugh is bold, wily and resolute, in the face of ordinary opposition; but he will not venture to grapple with you—he knows you too well.” To all this we may suppose the sick man briefly replied: “My son, ‘seek first the kingdom of God and his righteousness.’”

The young man goes away sorrowful and very heavy—concludes that his uncle is insane—and now remembers, what it would seem he had forgotten, that, when he returned from Washington, in 1856, he found him a mere wreck in body and mind.

Still, Mr. Smith leaves a very broad margin for other witnesses to stand upon. He saw Mr. Piatt but once from the time he received his injury to the time he visited Cincinnati after the will was made. Of course, except what he saw him suffer on that *one* occasion, he knows nothing about his sufferings. All his statements outside of this one day are the mere repetitions of what others had told him, or mere conjecture; and all opinions predicated on such statements are worthless. Let us quote him again: “I do not wish to be understood as ‘expressing the opinion, that J. W. Piatt was *insane* or *imbecile*; but that he was so tortured with physical agony, the ‘few weeks before his death, as to be incapacitated for a continuous train of thought upon any one subject.’”

Now, if it should appear from the testimony of others, who watched with him and waited on him by day and by night—day after day and week after week—that, for the “few weeks before his death,” his sufferings were limited to a few hours, or a few minutes in the night season, when he was visited with paroxysms of pain; and that, during the whole of almost every day, and part of every night, he enjoyed freedom

from pain—walked about on his crutches attending to business—was cheerful and elastic in his spirits—conversed freely on every topic—exercised as sound a judgment as he had ever exercised; and was treated and dealt with by all his neighbors and friends as a valid business man: what becomes of Mr. Smith's idea that he was "incapacitated for a continuous train of thought upon any one subject"? His theory perishes like the goodly gourd that covered the prophet of Nineveh, which "came up in a night and perished in a night." The root being smitten, the rank luxuriant growth withers away.

But if his theory was true, what of it? The law does not require capacity "for a continuous train of thought upon any one subject." The law does not require that vigor of mind which enables a lawyer to write elaborate arguments, investigate knotty questions and exhaust whole libraries of authorities; or which enables a divine to write and preach long sermons. If the testator has memory enough to remember what property he has to dispose of and who are to be the objects of his bounty, and understanding enough to know the immediate consequences of what he is doing, it is all the law requires to enable him to make a valid will.

But the present case does not require the rule to be stretched so far. It is abundantly proved that, though the testator was weak and emaciated in body and incapable of performing labor which required much physical strength, or such continuous mental labor as exhausts the body of a healthy man, his mind, except in his paroxysms of pain, was as clear as it had ever been in his life.

Some reliance seems to be placed in the fact that the testator, from early youth—perhaps seventeen years of age—had slight fits of epilepsy, which, as the proof shows, became less frequent and less severe as he grew older. Experts have not been examined as to the effects of this disease on the mind—but every one is sufficiently familiar with the subject. That frequent and severe fits of epilepsy, as a rule, destroy the mind, may be conceded: but the effects in such cases are peculiar, and are as well known to the world at large as to the medical profession. They first produce dullness, then stupidity, then idiocy, then total obliviousness of mind. But neither

er mania nor monomania is an effect of epilepsy. That slight and unfrequent fits affect the general understanding, is abundantly disproved by hundreds of instances. Julius Cæsar, the finest mind Rome ever produced, was always afflicted with epilepsy, and had a fit the day before his death. Dr. Mudd, who knew the testator's constitution well, and by whose medical aid both the number and severity of his fits were mitigated, as also his father, B. M. Piatt, and others, testify that they did not affect his mind at all, except for a short time while they were coming on and going off, and rarely ever interfered with the regular transaction of his business.

There were times, unquestionably, when Mr. Piatt was incapable of making a rational will. There is not one man in a thousand, who, from youth to old age, enjoys such an uninterrupted flow of health—or, in sickness, such uninterrupted clearness of mind—as to be always in condition to make a will. After Mr. Piatt received the wound in his knee, he suffered such intense pain from his wound—was so much of his time benumbed with opiates and so often delirious with fever—that a will made at such times ought not to stand. But was this state of things continuous? The proof is all the other way. After his wound healed, he was in condition to walk about and attend to such affairs as did not require physical strength or endurance, and enjoyed comparative freedom from pain and clearness of mind, except, ordinarily, once every night, a severe paroxysm.

But the eye and ear witnesses shall tell the story. Dr. Harding first dressed the wound and attended on the patient for eight weeks, when, on the 19th of April, one month before the will was made, he went to the West; and, we believe, saw the testator no more alive. He says: “the progress and cure of the injury of the knee joint was as rapid and favorable as could have been expected under the circumstances; “the wound having healed up within the succeeding eight weeks from the receipt of the injury. After the expiration of eight weeks, he was able to move about the room on “crutches.” And, speaking of his mind, the Doctor says: “I think that his mind and memory, both before and after “the receipt of the injury, so far as he was under my obser-

“vation, was quite as discriminating and retentive as that of “most men.” But how far did Mr. Piatt fall under Dr. Harding’s observation? He visited him, regularly, once every second day (and, frequently, every day), for eight weeks in succession, and conversed with him, not only on the objects of his visits, but on various topics, including that on which he is alleged to have been insane. It is quite safe to say, that Dr. Harding saw him ten times as often and conversed with him ten times as much as his brother Dunn, his sister Louise and his kinsman Smith, all put together; and that he was quite as good a judge of his capacity as either of them. Moreover, he had the opportunity of hearing him converse with others about business, and of knowing whether they, especially his brother Dunn, his son John H. and his father Benjamin M. Piatt, considered him capable of business. He says: “I was also present at another time, when his father and “Dunn Piatt, his brother, and, I think, his son John H. Piatt, “were present; and they were urging upon him, *especially Dunn* “*Piatt*, the propriety of having his deposition taken in a “business matter, the exact character and details of which I “did not very fully comprehend. My recollection is, that “Dunn Piatt urged the propriety of having an attorney, I “think Mr. Johnston of Cincinnati, down, to take his deposition in the case or business matter referred to. I think it “was in reference to some property in Toledo or Cincinnati, “or, perhaps, both. This was some six or eight weeks previous to Mr. Piatt’s decease, and the propriety of taking this “deposition was referred to me as his physician, as well as to “Mr. Jacob W. Piatt. It was advised that it should be deferred to another time, as he would be likely to be in a state “of health better adapted to the fatigue and exercise of mind “incident to this proposition. In reference to this business “matter, discussed between the parties above named, Mr. Jacob W. Piatt seemed to comprehend and understand the “subject under discussion. Mr. Jacob W. Piatt took part in “the discussion and seemed to understand it as fully as the “others.” This was the old chancery case of Piatt and Dunn’s heirs *vs.* Longworth and B. M. Piatt and J. W. Piatt, afterward compromised somewhat to the advantage of the estate

of J. W. Piatt, and somewhat to the detriment of the other children of B. M. Piatt.

Let us pause for a moment to inquire whether it was possible that the father, the brother and the son, of this sick man, would have thus urged the taking of this deposition, if they had not considered him capable of understanding and transacting business; and to inquire whether Dunn Piatt does not "strain at a gnat and swallow a camel" when he travels round so far to explain away the affidavit of the 18th of May and leaves his conduct on this occasion without explanation.

Besides Dr. Harding, there are three other historians of this period, whose opportunities of knowing the truth, and whose ability to judge of it, were remarkably great.

Dr. Mudd—a gentleman of liberal education and medical science, who, from his long acquaintance with the testator and having been so many years his physician, knew all his peculiarities of body and mind better than any other man—had been with him constantly, day and night, for the first five weeks after he received the wound, and visited him occasionally through the remaining eight weeks which he survived—in speaking of the condition of Mr. Piatt's mind, as to perception, memory and judgment, between his paroxysms of pain, says: "It was as good as usual, when in usual health, except that I thought he did not arrive at his conclusions as rapidly as when in his usual health. I thought his judgment sound, his memory tolerably good and his reasoning correct. I came to this conclusion upon noticing his instructions to his foreman, on the farm, and his directions to the workmen who were about erecting an addition to his residence: also, from remarking the manner in which he transacted business with his father, his brothers and others who had business with him. I also formed my opinion from my own conversation with Mr. Piatt, on religious, literary and other matters."

Benjamin M. Piatt, the testator's father, a man of great good sense and sober reflection, had spent a great deal of his time with his son during his last illness, and conversed with him on business and transacted business with him. Benjamin M. Piatt, jr., a man of six-and-twenty, the near neighbor and near kinsman, the intimate friend and the student of

the testator, had been with him much of his time by day, and watched with him by night, from one to three nights in the week, for three months of his illness—and had been with him all the time from the making of his will to the day of his death, conversing with him, as we have seen, on every topic which might try the powers of his mind: the testimony of these three witnesses, together with that of Dr. Harding, make out, beyond controversy, the following—

1st. When the testator was free from paroxysms of pain, his mind was as clear and discriminating as it had ordinarily been in health.

2d. On an average, his paroxysms did not occupy one hour out of the twenty-four.

3d. He rarely ever had a paroxysm in the day-time, and sometimes had none at night.

4th. His freedom from pain and fitness for business occurred in the day-time; his pain and unfitness for business in the night.

5th. His paroxysms were not always attended with mental aberrations; and, when they were so attended, his aberrations were of shorter duration than his sufferings.

6th. His aberrations did not come on till his paroxysms had made some progress, and he usually fell asleep when both subsided.

7th. He never attempted to transact any business when his mental aberrations were on; and, if he had, his sufferings were too intense to admit of it.

Where a man is ordinarily fit for business, and occasionally unfit, it is worse than folly to call one set of witnesses to prove his fitness and another set to prove his unfitness. The whole truth should be known.

Besides these four witnesses, there are numerous others who occasionally saw and conversed with the testator in his last illness—amongst others, the Rev. Robert Kirtly, of the Baptist Church, who had been successively acquainted with the testator's grandfather, his father and himself. This venerable man called on purpose to see him, found his intellect bright and his spirits cheerful, and conversed with him on various topics interesting to them both. After remaining in conversation two, or two and a half, hours, from all he saw

and all he heard, he makes this statement: "At that time I did "not discover any thing indicating any thing other than a "sane mind. His conversation and all was of a rational "character; so far as conversation and common matters were "concerned, his memory seemed good. I did not attempt to "test his memory particularly."

Reese H. Parry (a kinsman or connection of Mr. Piatt, who had many years' acquaintance with him, and who, in his day, had a good many bickerings with him about Know-nothingism—visited him, "at his home in Boone County," three or four days before his death, and had a good deal of conversation with him, and, believing he might recover, advised him to travel for his health), bears this testimony as to the condition of his mind at that time: "He seemed to be "the same he always had been as to sanity. For a man in "his condition, I regarded him as lively and sprightly, and "he seemed in a fair way for getting well." This was after he himself, with a better knowledge of his physical condition, had made up his mind to die.

To the same effect is the testimony of all the witnesses employed on the farm, who received their orders directly, or indirectly, from him from day to day.

The period now under consideration includes the last journey to Cincinnati, what happened there, and what occurred after he returned home. And, as before observed, during this time he fell under the particular notice of *ten* intelligent witnesses, including the two Benjamin M. Piatts, some of whom had business transactions and conversations with him, requiring the exercise of right reason, and all of whom testify to the entire clearness of his mind. It is not proposed to repeat, in this place, what these witnesses say, except a single quotation from the deposition of Benjamin M. Piatt, jr., giving an account of the testator's arrival at home, as illustrative of what he was when free from his paroxysms of pain. "On "each night that he stayed in Cincinnati he experienced considerable pain and suffering; more on Friday night than on "the night previous. He resolved, on that night, that he "would go home the next day—said that he had no hope of "recovering. On Saturday morning he still so expressed himself and requested me, as usual, to go with him to the bath

“and to take him home that day on a boat, which I did.” Again: “We went down on the packet (I think it was the “Lady Pike, to the best of my recollection). We got off just “below his house. We waited at the river until his man could “drive down with the Jersey wagon. We then got in and “rode up to the house; two or three of the children came “down to meet us, and rode up with us. He walked up the “bank from the water’s edge, when we got off the boat; part “of the bank was very steep. I walked behind him, and, “when we got to the top of the bank, we sat down together “under a large tree to rest and wait until his man could arrive. We talked together as usual, while sitting there, and “among other things, he told me that he was glad to get back. “When we drove up to the house we met Mrs. Piatt and Mrs. “Mudd at the yard gate; they all met very affectionately, and “he told them he had come to die in peace, that he had tried “everything, and he thought there was no hope of his recovery: that he wanted everything made as pleasant as possible, “for that was all that could be done. We all went into the “library together; he sat on the large chair that he had used “after he commenced sitting up, conversing pleasantly with “us all, seeming perfectly resigned and willing to die. He “seemed perfectly sane on that occasion; knew every person “about him as well as he ever did in his life. I went into the “house soon after, and left him in conversation with Mrs. “Mudd and Mrs. Piatt.” Which does this most resemble, the “ravings” of a maniac or the triumphs of a Christian philosopher?

Let us now revert to the interval of time which elapsed from the return of Dunn Piatt and his family from Europe, and Mr. Smith from Washington, down to the time the testator was wounded—say, the last year of his active life. Dunn says: “I was very much shocked, on my return, by the change “wrought in my absence—more apparent by my not having “seen him. He was much reduced, was a mere skeleton. “Contrary to his usual habits, he was quiet or subdued, and “exhausted. He was affectionate in his manner, except when “excited; then his excitement was of unparalleled violence. “He had not the same confidence in those around him, and “in men generally, as before I went abroad. He was men-

"tally and physically exhausted—his mind was impaired as well as body." Smith says: "I found Mr. Piatt, on my return from Washington, in 1856, a mere wreck of his former self, in both body and mind."

These two witnesses are here quoted for the purpose of comparing their opinions of Mr. Piatt's condition of body and mind, during this period, with that of other persons, who saw far more of him and had better opportunities to know the truth.

Doubtless, both Dunn and Smith found him in worse health than they left him. Doubtless, he suffered greatly and frequently from ill health. Doubtless, he was sometimes unable to attend to business at all. Doubtless, he sometimes attended to business when he was very feeble. Doubtless, he was sometimes in low spirits and dull, as when he consulted Dr. Ehrmann. Doubtless, he was sometimes unequal to himself, as when he tried the case of the British Consul. But what of this? Such things occur in the experience of every man. The question is, Were his mental faculties materially impaired? Was he such a wreck as these two gentlemen would have us believe? Slight impairments of a man's mind might not be noticed by his neighbors; but such a change as these gentlemen speak of could escape no intelligent man's notice. A man, remarkable for common sense and aptitude for business, could not run down into a mental ruin, unfit to make a rational disposition of his estate, without his neighbors, especially those who had business transactions and professional contests with him, noticing such a melancholy change. And what is the testimony of these?

Jeremiah H. Jones, who knew him for seventeen years as a brother lawyer, had been his tenant and lived next door but one to him for years, says: "I am not able to give the last date of my intercourse with Mr. Piatt. I had professional intercourse with him at the last term of the Court, I think, at which he attended at Cincinnati. I feel persuaded of this, because the business I had with him at that time was subsequently attended to by his brother. He was then in feeble bodily health. His mind was as strong, to all appearance, as it ever was. He conversed with me about business which we had together—suits which had been long pending;

“and I perceived no change in the condition of his mind from what it had always been.”

Isaac C. Collins, now one of the Judges of the Common Pleas, besides his general acquaintance of many years, was opposed to him in an action in the Superior Court, in which the property of Mrs. Thomas K. Smith was involved, where Mr. Piatt appeared in the double relation of attorney and next friend, and had the better of Mr. Collins in the contest. He says: “I think he was a man of great sagacity and a thorough knowledge of human nature—of much more than ordinary talent—bold and adroit.” And then, in speaking of the condition of his mind at the time of this contest, in November, 1856, he says: “It was as active and vigorous as it had been at any time during our acquaintance. I saw no indication, whatever, of his mind being impaired in the least.”

Mr. Garrett, of the firm of Garrett & Cottman, was Mr. Piatt's client, and had a cause in Court tried among the last, perhaps the very last, he ever attended to. Mr. Garrett does not remember the date; but it appears, from the testimony of Judge Van Hamm, that the trial was in November, 1856. He says: “He seemed to be in very feeble health. I considered the case was conducted with very marked ability—decidedly so.”

Judge Van Hamm, before whom this last case was tried, testifies as follows: “I was acquainted with him for many years before his death. He appeared as Counsel for the Plaintiffs in the case of Garrett & Cottman vs. Peacock & Son, which case was tried before me at the November Term, 1856. He appeared before me in a great many cases while I was on the bench. He tried before me the case of the State of Ohio vs. Harrington, who was charged with murder, at the May Term, 1856. * * I never observed any change whatever in his mind. He always managed a case with great ability and shrewdness. * * I know nothing, personally, of his private affairs, or of his management of them. He had the reputation of being a remarkably prudent man, and was reputed to be successful in the acquirement of property.”

Dr. James Taylor, a dental surgeon, had been acquainted with Mr. Piatt, and done more or less work in his profession

for him and his family every year, for seventeen years. He did some work for him, and had some conversation with him, as late as November, 1856; and, speaking of the condition of his mind, he says: "There was nothing about him that attracted my attention to the subject. I noticed no difference between what he was then and what he had been at any of our previous interviews."

Dr. Thomas Wood, of Cincinnati, says: "I was acquainted with him some six or eight years. My opportunities [of knowing him] were from intercourse with him as his family physician, and in his family circle." Dr. Wood was one of the physicians who were called in consultation with Dr. Harding, of Lawrenceburg, when Mr. Piatt suffered the injury from the saw, and visited him repeatedly on that occasion; so that he had been both his physician in Ohio and his surgeon in Kentucky. In answer to this request, "State now, if you please, whether you ever discovered, either before or after the injury inflicted by the saw, any evidence of alienation or weakness of mind in Mr. Piatt," he says: "No, I never did. During the time he was confined with his wound, I was informed that he was delirious at nights, but I never saw any of it. He was always rational when I saw him. I supposed these aberrations to be the transient delirium of fever."

Daniel Van Matre, esq., who had known Mr. Piatt upward of thirty-five years, practiced law with him, and formerly acted as his legal adviser, and who kept up his acquaintance with him as long as he was able to come to Cincinnati to attend to business, says: "He was a man that managed his own business with extraordinary care and diligence;" and, speaking of the last time he ever conversed with him, he says: "He appeared then, to me, to be a man of sound mind and memory, as I had always considered him to be, the various times I had met him, after I first became acquainted with him."

James S. White, esq., testifies that he had been personally acquainted with Mr. Piatt for ten years, and had been accustomed to hear him try causes in Court; and that he was associated with him as counsel in the trial of a cause as late as November, 1856. He says: "I considered him a man of sane mind during the time I was personally acquainted with

him." And, on being asked to state what degree of vigor of body and mind he brought to the trial of this cause, compared with others he had heard him try, he says: "It was "with his usual vigor of mind. He displayed, in the trial "of that cause, as much ingenuity and ability as I had heard "him in any case before that time. He argued the case at "considerable length, and with much warmth and vigor. He "was, as was usual with him, remarkably witty and sarcastic. "His examination and cross examination of witnesses was "also conducted with his usual shrewdness, tact and ability. "He was, in body, somewhat debilitated—having had, a short "time previous to the trial of that cause, an attack of sickness."

William Chidsey, esq., had known Col. Piatt, as lawyer and citizen, for twelve years. For the last five years he was intimate with him by reason of his position as a magistrate. He used to do a great deal of business in his office—had a large number of cases before him; and he believes he was as strong-minded and sensible a man as he ever knew. And, after giving a general account of Col. Piatt's character, he goes on to say: "I was present at the execution of the deed "by Daniel Riley to Col. Piatt (I think on the 3d of February, 1857), and of the mortgage by Col. Piatt to Daniel Riley, in the capacity of a notary public, and took the acknowledgment of the parties both to the deed and the mortgage, and was also an attesting witness to the same. Daniel Riley, sr., and Daniel, jr., were present—also John H. Piatt and some others whom I do not remember. I had a "conversation with Col. Piatt at the time on the subject of "the purchase of the property. I remember well that he "said he had given more for the property than it was actually worth, on account of its proximity to his other property. "I believed his mind to be perfectly sound—as much so as "any man's could be. We conversed about other matters— "about general matters—and his mind was perfectly clear."

Daniel Riley, jr., resides in Cincinnati, and was well acquainted with Col. Piatt. He says, in speaking of the transaction stated by Mr. Chidsey to have taken place on the 3d of February, 1857: "I can state no dates. I was present "when he gave his note for \$1.000, and his check for \$1.000,

“for a piece of property on Seventh street which he bought from my father. There was also a mortgage executed by him at the same time. My father made Col. Piatt a deed for the property at the same time. Esquire Chidsey was present, Mr. Piatt himself, and, I think, his son, and myself. His mind was just as sound that day as it ever was; and I have known him for twenty-five years. I considered his mind, at all times, just as sound as anybody’s on earth. I never saw much difference in him, and I have known him for, probably, thirty years—for twenty-five years, sure. I have known him almost as long as I have known anybody—since I was a boy. I never saw any change in him from the time I first knew him, till the time I last saw him.”

Judge Parker says: “My first acquaintance with Mr. Piatt was in 1852 or 1853, and in May, 1854, I was appointed one of the Judges of the Court of Common Pleas of Hamilton county, which place I occupied until February, 1857. During that period, I saw Mr. Piatt almost daily, and he was frequently engaged in cases before me. I frequently had personal intercourse with him off the bench, during that period.” And, speaking of his latest intercourse with the testator, he says: “So far as Mr. Piatt’s mind and memory was concerned, I never, either at that time or at any other time, even suspected that it was unsound, or different from that of other men of the same degree of intelligence and education.”

Mr. Daly had studied the law with Mr. Piatt and afterward been his partner in the practice; and, from the account he gives, must have had a very great deal of intercourse with him, keeping up his acquaintance as long as Mr. Piatt was able to come to Cincinnati. He says: “Mr. Piatt was a very able manager of his business. No man could be more so.” And again: “I think, in 1856, I rode up with him in the cars from Lawrenceburg, and we had a long conversation. His mind seemed to me as vigorous as ever. I had other conversations during the same year with him, perhaps three or four times, and recognized no difference in his perception of business matters. I have never found him otherwise than

"shrewd, and full of strong common sense, in all my intercourse with him."

Mrs. Stille', with whom he took his meals when he came to Cincinnati, says: "I was acquainted with Mr. Piatt, and lived next door to him, being his tenant, for five or six years. My acquaintance with him continued up to about the middle of February, 1857." Again: "My business transactions with him were as his tenant. I never discovered any decay of intellect in him. His mind remained vigorous, so long as I had any acquaintance with him, so far as my knowledge extended."

Judge Tilden had seven years' acquaintance with the testator, during which time he had been employed by him in the line of his profession. His opportunities of knowing the condition of his mind, in the latter years of his life, were great and numerous. His answer to the proper interrogatory, after giving the history of his acquaintance, is: "It may, perhaps, be proper to premise, that, having been informed that the mental capacity of Mr. Piatt had been questioned, I have been led to recall some of the incidents of our intercourse, and to the formation of an opinion upon the point thus raised. And, I am obliged to say, that, although he was in some respects (I mean in his mode of social intercourse), peculiar, perhaps eccentric, he was a man of clear perceptions, of very decided opinions, and, generally, I should say, of sound mind. In the latter periods of his life, to which my attention is particularly directed, he suffered much from sickness and disease, and I saw nothing of him after he retired to his farm in Kentucky and to his sick room. But, whilst he was sufficiently strong to get around and come to the city, I saw and conversed with him occasionally, especially upon the subject of the malady which afflicted him; and I can recollect no remark, and no incident, which would make me suspect any aberration of mind, or the existence of any delusion, or indicate any decay of intellect."

Rufus King, esq., had known Mr. Piatt personally since 1842 or 1843, and had known him by reputation much longer. In speaking of the last occasion on which he conversed with him, he says: "There was nothing in Mr. Piatt's conversation or conduct, either then or previously, that ever

"suggested a doubt, in my mind, as to the soundness of his mind."

Judge Storer, of the Superior Court, a witness called to invalidate the will, says: "I became acquainted with Mr. Piatt, I think, before he was admitted to the bar; and since his admission to practice as an attorney at law, until the time of his death, a period, I think, of nearly thirty years, if not more, I have known him well." And the testimony of Judge Collins shows that Mr. Piatt tried a cause before Judge Storer as late as November, 1856. When this question is asked Judge Storer: "As long as Mr. Piatt continued to practice his profession, did you ever notice any impairment of his mental faculties?" He answers briefly—"Never."

Judge Spencer, of the Superior Court, says: "I am a resident of Cincinnati and have been all my life. I was intimately acquainted with the late Jacob W. Piatt, from the earliest recollections of my boyhood—say forty years." And, coming down from his earliest to his last recollections, he says: "The last time I recollect having seen and observed him, was, on the occasion of a trial between Humble & Son and himself, growing out of the erecting of the front of some houses on Pearl street, which had before then been erected for Mr. Piatt. He was a witness in the case. The trial alluded to occurred a few days, perhaps a fortnight, before he received an injury in his knee, as I understood, from a saw. He appeared to be then in his usual health, although he had been, a short time before that, perhaps, an invalid. His memory, then, appeared to be good and his mind in its usual condition."

To these fifteen respectable witnesses might be added many more to the same effect; but, as their testimony is referred to in other parts of this argument, let these suffice for the present.

V.

The gauge of testamentary capacity, under the Statute of Kentucky, is, that the testator shall be of *sound mind* when he executes his will. By this phrase it is not to be understood that the testator had a perfect mind; or, that he had a mind equal to the common order of mind; or, that his mind, at the time he executed his will, was as sound as it had been at some

other time; or, that he had a mind unimpaired by disease: if the testator, at the time he executed the will, had mind sufficient to recollect the property he intended to dispose of, the persons to whom he intended to give it, and the manner in which he wished to distribute it among them; if, in short, at the time he executed the will, he had a mind sound enough to know and understand the business in which he was engaged, it is sufficient.

Jarman on Wills, 50, 51, 52, 53 and notes; *Lowe vs. Williamson*, 1 *Green's Ch. R.*, 82; *Stevens vs. Vancleve*, 4 *Wash. C. C. R.*, 262; *Stewart's Ex. vs. Lispenard*, 26 *Wendall*, 255; *Harrison vs. Rowan*, 3 *Wash. C. C. R.*, 580; *Sloan vs. Maxwell*, 2 *Green's Ch'y R.*, 563; *Whitenack vs. Stryker*, 1 *Green's Ch'y R.*, 8; *Turnbull vs. Gibbons*, 2 *Zabrisca*, 133; *Ingram vs. Wyatt*, 1 *Haggard*, 167; *Shelford on Lunacy*, 274, 275, 276, 277; *Potts et al. vs. House*, 6 *Georgia R.*, 324; *Carroll vs. Norton*, 3 *Bradford*, 291; *Williams vs. Goude & Bennett*, 1 *Haggard*, 252; *Barry vs. Butlin*, 1 *Curtis*, 637; *Jackson vs. King*, 4 *Cowan*, 207; *James et al. vs. Langdon*, 7 *B. Monroe*, 658; *Reed's Will*, 2 *B. Monroe*, 78; *Revised Statutes of Kentucky*, 693.

The rule of law, thus diversified, is amply sustained by decided cases, and requires no argument. The law does not allow men to sound each other's depths of reason and gauge each other's capacities, and say, this man or that has not capacity to make a rational distribution of property, or to take a comprehensive survey of an estate. If the testator remembered the objects of his bounty, knew what he had to give them, and understood how he meant to divide it, the law is satisfied. Was the testator within this rule of law when he made his will?

The instrument itself is the first and highest evidence, if it is proven to be the work of the testator. This instrument, according to all the proof on the point, was dictated by himself alone, without any one to refresh his memory or suggest an idea. After a rough draft was made, he read it carefully over and made such interlineations as he thought proper, and submitted it to his wife, his father and mother. None of their suggestions commended themselves to his judgment and he refused to make any alterations. He ordered it to be engrossed, and, after engrossment, read it over carefully again,

and said it was all right. There can be no doubt, then, that this instrument is an exact type of his mind at the time. Does it, on its face, indicate testamentary capacity, according to the rule laid down?

First: Does it show that the testator called to mind all the objects of his bounty and knew who they were and what relations they sustained toward him? He begins with his wife, and declares it to be his will that she shall take, in her own right, so much property as the law allows her in the several States where it lies, and no more. He calls Mrs. Jenkins to mind, and describes her as the only surviving child of his marriage with Caroline Canfield, remembering that her sister, Mrs. Shoemaker, was dead. He calls to mind John H. Piatt as his only surviving child by his marriage with Harriet Lanman, knowing that there was no other: and, to these two children he gives specific devises. He then calls to mind his seven young children, by his third marriage, one by one, naming them all in regular succession, from the eldest to the youngest. With this instrument of writing before the eye of the Court, the opinions of doctors (from what they saw of him three days afterward and from what they imagined to be his mortal disease), that he had not capacity to call to mind the objects of his bounty and understand the relations between him and them, are "as nothing and vanity."

Second: Does it show that he knew what property he had to distribute among his family? It appears, from the will, that he had property in three States—Ohio, Kentucky and Illinois. His plan of distribution made it necessary that he should describe, specifically, three items only. The house and lot which he gave to Mrs. Jenkins he describes, from mere memory, as "a lot of ground with the improvements thereon, "thirty feet square, on the south side of New street, about "sixty feet east of Sycamore street, in the city of Cincinnati, "Ohio, whereon is erected a three story brick dwelling "house." He describes the property he intended for John, as "my entire Law Library, now in his possession, in the city "of Cincinnati, Ohio, this being all I intend to give to my said "son." He describes the property set apart as a residence for his widow and children, and, ultimately, to be given to one of his sons who shall choose the occupation of a farmer, as "the

"homestead farm at Federal Hall." He describes that which is not specifically devised, as "all the rest and residue of my estate, real, personal and mixed, in Ohio, Kentucky, Illinois, or elsewhere." Can any body read this will and pretend that its author did not know what property he had to distribute among his family? Ignorant people, who have the words "comprehensive survey" put in their mouths by suggestive questions, without themselves "*comprehending*" what a "*survey*" means, may say what they may; but here is the internal evidence before the eyes of the Court.

Third: Does it show that the testator understood the manner in which he wished this property to be distributed among the objects of his bounty? He gives Mrs. Jenkins a life-estate only in her portion, with remainder to her children; providing that if she shall die without children surviving her, the estate shall revert. He gives the Law Library to his son John outright, declaring this to be the only portion he intends to give him. He selects the homestead farm, at Federal Hall, where the ashes of his grandfather repose and where he himself was born, as a residence for his family, where his widow may reside and his children may be reared "free from the contaminating influences of towns and cities." He authorizes his executrix to sell real estate, if necessary, to defray the expenses of educating his children, but for no other purpose whatever. He appoints his wife executrix, guardian and trustee, and commits the property of the minor children to her keeping during their minority, so that she may the better control their persons by having also the control of their estates. He orders his estate, after the purposes of maintenance and education are accomplished, to be divided among his seven minor children (naming them), or the survivors of them, in equal proportions, share and share alike. He authorizes and empowers the trustee to apportion and set off, by deeds or otherwise, the said estate to the said children, as they shall come of lawful age, according to her sense of justice and equality. He orders "the homestead farm at Federal Hall to be set off to one of his sons who shall choose the occupation of a farmer." Apprehending that a second marriage of his wife might, indirectly, work injustice in the distribution of the estate, or entangle his children in disputes with a stranger, he takes the

executorship, the guardianship and trust out of her hands, in the event of a second marriage. Is it safe, with this instrument before him, for a man of sense to say that the testator did not understand the manner in which he wished to distribute his estate among the objects of his bounty?

Take, then, the will itself, and try it by its own internal evidence, and see whether its author had what the law regards as testamentary capacity.

It is out of the question that any scrivener, without the dictation of a clear and powerful mind, in the full possession of all its faculties, acting on a plan fully matured before hand, could, in one day and on three pages of cap, concentrate so completely the evidence of all the capacity of mind which the law requires to make a valid last will and testament.

The next and the most natural and important inquiry is, how did the testator conduct the common and ordinary affairs of life before, at and after, the time when he made his will? And, to be certain of including the time when Mr. and Mrs. Dunn Piatt returned from Europe, and Mr. Smith returned from Washington City, let us extend our inquiries back a year. During that time he was constantly engaged in business, either as attorney for others or in the management of his own private affairs. He bought and sold property—pulled down old houses and built new ones—built fences and tilled fields—planted orchards and cultivated gardens; and, being in the transition state between the lawyer and the farmer, his mind was at once burthened with the labor of closing up his old business and opening up the new. With all this on his hands, it is impossible it should have escaped notice, if there was any serious falling off or defect in his business capacity. One who leads the life of a hermit, excluded from the busy world, might have great mental aberrations, nay, might be insane outright, and no one know it, simply because he came in contact with no one. But in a populous city, employed in a profession which, of all others, exposes one to observation, and which, of all others, tests most rigidly the power and perspicacity of the human mind—in daily conflict with hundreds of other lawyers—it is inconceivable that any material impairment should have taken

place in the testator's mind, within the last year, without being noticed by his professional brethren. And yet, among several hundred lawyers who were well acquainted with him, no one is found who can say that he discovered any change: the uniform testimony of the legal profession is, that, down to the day he was disabled by the wound in his knee, his mind was as clear as it ever had been.

Just one year before he made his will he was defending Harrington against a charge of murder; and, though in feeble health then, tried the case with his usual ability. A few weeks before he received his wound, he tried the case of *Garrett & Cottman vs. Peacock & Son*; and, though he was so weak in body that he sat upon the table to make his argument, he tried the case, as his client swears, "with very marked ability." Still later in life he appeared as a witness before Judge Spencer, in the *Humble* case, and underwent a long and critical examination, in which, as Judge Spencer and other witnesses swear, he testified with clearness of mind and memory. During the whole of this year he was engaged, more or less, in the practice of his profession: and the uniform testimony of the Judges before whom he practiced, and of the Counsel with whom and against whom he was engaged, is, that his mind was as clear and vigorous as ever.

It is said, by Hiram Robinson and Dunn Piatt, that, in the case of the British Consul, he did not acquit himself as he might have done. That is quite possible. Mr. Piatt was not always equal to himself—and, on this occasion, may have fallen below some of the intellectual giants who struggled against him. But it is a matter of history that he won his case—and that is more than the best of us can always do. But the matter now in hand is not to show that he was a great man or a profound lawyer, but to note the fact, that, through the whole of the year in which it is pretended he was a wreck, he is not shown to have mismanaged one matter of business, whether connected with his old business as an Ohio lawyer, or his new business as a Kentucky farmer.

His uncle Abram, indeed, mentions an instance which looked to him as if the testator was crazy. He purchased, in Cincinnati, a boat load of old doors, windows, shutters, and other parts of old houses, and carried them down to his

farm. It is well known to every body who has ever lived in a growing city, where thousands of old houses are pulled down and thousands of new ones built up every year, that doors ready painted, windows ready glazed, cupboards all complete, and every other variety of joiner-work, of better material and workmanship than modern builders put up, can be purchased at auction for all but nothing. If Mr. Piatt, having no use for such things, had gone about purchasing them on speculation, he would have made himself ridiculous. But Federal Hall, the mansion of his grandfather, had been burnt out, and was to be refitted. His office and library room, his farm-house and out-houses of various kinds, were to be built—and these materials, which troubled the mind of his uncle so much, supplied all these purposes at one-fourth the ordinary cost, and left the fragments, worth all he had paid, for kindling wood. This instance is worthy of notice only because it is a fair sample of the facts on which the witnesses in this case seek to impeach the sanity of one of the most sagacious men that ever lived amongst us.

After Mr. Piatt suffered the wound in his knee, he continued to transact business, whenever he was not racked with paroxysms of pain, to the last day of his life. During his illness, from day to day, he gave orders to his foreman and instructions to his agent in the same clear and rational manner he had always done. He settled old accounts and drew checks on his bankers to the amount of \$3,841 95; and, on the very day he died, he made a loan of several thousand dollars to his brother-in-law, Gen. Worthington. And, what is remarkable in all this is, that not one of the witnesses has been able to recall or state a single instance of a bad bargain, or a foolish, weak or improvident transaction in which he was engaged, from the day his brother Dunn came home from Europe, and his kinsman Smith came home from Washington, down to the hour of his death.

His peculiar views about government, about education, about religion, about any thing and every thing *except business*, are constantly put forward to prove that he lacked capacity *for business*.

There is one other consideration bearing on the question of testamentary capacity, which may as well be stated here as

elsewhere: it is, the light in which the testator's friends and family, but more especially the persons now contesting his will, and the witnesses on whose testimony they rely, must have regarded him. And, for greater brevity, this inquiry shall be confined to the interval of time between the wound he received in his knee and his death.

His venerable father, whose understanding and integrity are not yet impeached by his children, did not hesitate to transact business and settle accounts with him; and he states, under oath (and his veracity is not yet impeached), that, if he had doubted his capacity, he would not have transacted business with him.

His son-in-law, Thomas C. Jenkins, one of the contestors of the will, visited him on the 11th of May, eight days before the will was made, and, without questioning his sanity at that time, received his check for \$500.00, by way of souvenir to him and his wife.

On the 18th of May, the day before the will was made, the principal contestor and his principal witness, John H. Piatt and Dunn Piatt, were at Federal Hall on business. Dunn has not given us an account of the condition of his brother's mind on that day; but he has left record evidence of what both he and John thought about his capacity for business. For the purpose of setting aside a judgment, in the Superior Court of Cincinnati, against Mr. Piatt, they prepared a long affidavit, in John's hand-writing, setting forth minutely a series of facts which transpired when Dunn was in Europe and John in college—facts which could be known only to Mr. Piatt himself. Amongst other statements contained in this affidavit, are these: That, by reason of his wound, he had been unable to attend Court in Cincinnati—that his own evidence in the case was material—and that, if the judgment were opened up and the cause set for a future day, he hoped to be able to give his deposition, or to attend Court in person, if the Court should prefer it, and give his evidence. An oath to this affidavit was administered by John, as notary. The affidavit was filed by Dunn, as attorney for his brother. And, on this, Judge Storer opened up the judgment.

That all parties meant what was said, when a hope was expressed that the affiant would be able to come to Cincin-

nati and testify in the case, if the Court should so order, is clear from two other instruments of evidence. John, in a letter to his sister Belle, after his father came to Cincinnati to take the baths, informs her that, to have the benefit of Dr. Murphy's treatment, he is either coming to Cincinnati or Dr. Murphy going to Federal Hall once a week; and expresses a preference for the former, because he is now able to travel, and the trips will do him good. And Dunn, in a letter to his brother, after he returned to Federal Hall, expresses a hope to see him again before long at his house in Cincinnati.

The only conclusion which can be drawn in relation to this affidavit, consistent with decency, honesty or fair practice, is, that, at the time it was drawn up and sworn to, these gentlemen believed the affiant was of sound mind and memory, sufficient to remember and state the facts set forth in it—that he was competent to give a deposition or to testify in a Court of Justice, and that there was a reasonable prospect that he would be able, shortly, to attend Court in Cincinnati for that purpose. If they did not believe this, John committed a melancholy blunder in drawing up a statement for a crazy father, which he could not have understood, and part of which he knew to be false, and going through the solemn mockery of administering an oath to him. But John practiced no such wickedness. He was too young to be so corrupt. He believed his father was capable of remembering and understanding the statements to which he swore. He believed there was a reasonable prospect that he would be able to attend Court in Cincinnati. He believed that, when he did attend Court, he would be competent to testify.

Dunn's position, if they did not so believe, was still worse. First, he was a party to the making a false statement, under oath, by a crazy brother. Second, he practiced a fraud on the Court by presenting this statement as a genuine affidavit. It does not mend the matter to say, as Dunn now says, that this paper was intended only for a professional statement. It only suggests another professional fraud, to say that a paper inconsistent with truth, which the Court received at his hands and acted on as a true affidavit of the party, was, in fact, only intended as a professional statement of the attorney. And, if it was a professional statement of an attorney, what then?

Ought not the professional statement of an attorney be true? The professional statement of a lawyer, like the honor of an English Peer, is received in Court as equivalent to the oath of another man; and, if a lawyer is known to abuse this high privilege, it shakes one's confidence in his testimony: because one can not help asking the question, Which is the more reprehensible act, extracting a false and inconsistent statement from a crazy client, or making it himself. View this matter as we may, Dunn's explanation is very unsatisfactory. There is but one view of it consistent at once with honor and fair-dealing on the part of these two gentlemen, and of Christian charity on our part; and that is, that both of them acted fairly and in good faith at the time, and that Dunn's memory has since failed him.

Again. We find Thomas K. Smith, who professes, on his return from Washington, to have found the testator "a perfect wreck of his former self"—when he was about to suffer the last and heaviest calamity of a politician—when he was in dread of losing his office, through the influence of Senator Pugh and the condemnatory vote of the U. S. Senate—flying to this "wreck," this imbecile, this maniac, for counsel and assistance.

After the will was made, these people still treated him as if they considered him competent to transact business. Dunn Piatt admits, that, before the testator came to his house on Broadway, he told Mr. Johnston that he meant to re-write the will, and get Archbishop Purcell and some other priest to speak to him about making a different disposition of his property. The happy joke which he makes, under oath, about knowing the influence Father Driscoll had over him, does not mend the matter. Unless he believed his brother competent to make a will, it would have been knavish, through the influence of Bishop Purcell, or Mr. Driscoll, or any body else, to persuade him to make one.

On this same visit to Cincinnati, as we have seen elsewhere, Bishop Purcell did endeavor to induce the testator to make a different will. His father and mother made the same endeavor, in the presence of Mrs. Louise Piatt, who, as an honest woman, ought to have put an end to such importunities, practiced on a sick man in her own house, unless she believed, at

the time, that he was competent to do the act which he was importuned to do. I am loth to think, that a man of Archbishop Purcell's high character would use his influence to persuade a man in a state of imbecility into an act requiring the exercise of reason. And as to B. M. Piatt, he has stated, under oath, his principle of action: if he had entertained any doubts about the testator's capacity, he would have had nothing to do with the matter.

What further do we find? After the testator's return to Federal Hall, Dunn writes him a business letter, asking him, on behalf of Gen. Worthington, for the loan of a large sum of money; and, on the day of his death, only a few hours before he expired, he draws up a check for \$2322 50, the proceeds of the loan, and obtains his brother's signature to it—and the money is paid on it. This letter speaks for itself and can not be explained away. That part in which he expresses the hope of seeing his brother again, shortly, at his own house, may, as he says, have been written merely to cheer him up; but the business part of it was written to obtain money.

What further? The night the testator died, Dr. Mudd, sick and worn out with watching, went to his room for a little repose; and there he found Dunn Piatt writing a codicil for him to sign. He asked the Doctor's opinion whether his brother was in a condition of mind to execute it. The Doctor expressed a wish that it could be done, but told him it was too late. Why should he write this codicil unless he believed the testator capable of executing it understandingly? Why should he propound such a question to Dr. Mudd, but that he knew his brother was dying, and wished to know of a medical man, who had just come from his bed-side, whether he had yet vigor of mind to comprehend what he was about to ask him to do? He says he wrote this codicil at Dr. Mudd's suggestion. This is entirely inconsistent with the Doctor's account of the transaction, and is but a child's apology at best. How does it mend the matter, if Dr. Mudd did make the suggestion? This full grown man, of forty years, was not bound to stultify himself by withdrawing from his brother's death-bed to a solitary room and drafting an instrument of writing which he knew could serve no purpose, merely because Dr. Mudd suggested it.

Whether J. W. Piatt was sane or insane during his last illness, one thing can not be denied: his friends and relatives, including both those who contest the will as parties, and those who contest it as witnesses, dealt with him as if they believed, at the time, that his mind was sound.

VI.

Partial insanity, or monomania, is not sufficient to invalidate a will, unless it appears, from the evidence, that the will was the product of an insane delusion, under which the testator is proved to have labored at the time of its execution. Nor will prejudices against one to whom the testator is supposed to have done injustice in his will, though strong and unreasonable, be sufficient, unless they were founded upon some insane delusion, proved to have existed in the mind of the testator at the time the will was executed:

Shelford on Lunacy, 41; 1 *Jarman on Wills*, 58, 59—43, 44—62 to 64; *Greenwood vs. Greenwood*, 3 *Curtis, Appendix* 1; 3 *Curtis, Appendix*, 30, 31; *White vs. Wilson*, 13 *Vesey, Jur.*, 87; *Dew vs. Clarke*, 3 *Adams*, 79; *Shelford on Lunacy*, 296, 297; 1 *Adams*, 279; 2 *Adams*, 102; 3 *Adams*, 79; *Boyd vs. Eby*, 8 *Watts*, 66; *Falleck, vs. Allison*, 3 *Haggard*, 527—547; *James et al. vs. Langdon*, 7 *B. Monroe*, 198; *Reed's Will*, 2 *B. Monroe*, 80; *Singleton's Will*, 8 *Dana*, 321.

Partial insanity, or monomania, is defined to be an insane delusion on one subject, while the mind is rational on all others. But what is an insane delusion? It is not every delusion that is an insane one. It is not error in judgment; it is not want of proper information; it is not false information. That which the law regards as an insane delusion is, where a person, from the disorder of his mind, believes a thing to exist which has no existence. Mr. Jarman relates two cases to illustrate the difference between insane delusions and other delusions:

1st. A man is sick of fever, and his brain affected. Just as insanity takes its ground, his brother administers to him a draught of medicine, which, from the disordered state of his mind, he believes to be poison. He recovers, both from his fever and his insanity, except this one insane idea, that his brother had poisoned him; and, acting upon

this idea, when he comes to make his will, he disinherits his brother.

2d. A clergyman of the established Church, together with all his household, are poisoned, or seem to be poisoned; and he takes up the belief that his kinsman, whose office it was to collect his tithes, has poisoned him and his household by bringing him unwholesome and poisonous provisions. There is no satisfactory proof of his kinsman's guilt in the matter, but he adheres to the belief; and, acting upon it, when he comes to make his will, he disinherits his kinsman.

Allowing both these parties to have been equally innocent, there is yet this broad distinction between the action of the two testators: the delusion of the former was an insane delusion—the delusion of the latter was an error in judgment on the weight of evidence. The former had no foundation for his belief, except insane delusion. The latter had some foundation for the belief that he was poisoned, and circumstances pointed to his kinsman as the poisoner.

In utter despair of proving a case of general derangement or imbecility of mind on the part of the testator, the Broadway junto assume that he was partially insane—he was a monomaniac on the subject of the Catholic religion. This is the Alpha and Omega, the beginning and the ending, of all that Dunn Piatt, Louise Piatt and Thomas K. Smith, have to say. Every fact they state, and every opinion they express, comes home and clusters around this one central idea—he was a monomaniac on the subject of the Catholic Church and the Catholic religion.

What insane delusion was it that possessed this man's mind in regard to the Roman Catholic Church? Was it that he believed the Church to be infallible? Was it that he believed in the Apostolic Succession? Was it that he believed in the Seven Sacraments? O, no! What then? Why, his zeal was so extravagant as to amount to madness! He acted under an insane belief that he was divinely called to promote, right or wrong, the interests of the Church, and to make converts to the Catholic faith!

I have known intimately and conversed frequently with a religious monomaniac, who, for half a century, constantly acted under an insane delusion that he was divinely called to

preach the Gospel. He was a truly religious man, and, at first, desired to enter the ministry in the Church wherein he was converted. But no one, except himself, thought he was called to preach. He must and would preach—but his brethren would not allow him to preach—and he withdrew from them and preached by Divine authority alone. He carried a copy of the Scriptures in his bosom, and read, and annotated, and marked, and folded down, till he became a walking concordance, and could in a moment turn up any text, appropriate or inappropriate, to prove a point. Still his ministry was not attended with such success as to prove his mission Divine. He never made a convert in his life, nor did any one ever attend with seriousness to his preaching. Still he preached on, nothing daunted by his want of success. He would not work, though a robust old man and a skillful mechanic, for the one powerful reason—God had called him to labor in his vineyard. He was too poor to own a horse; and, as he grew too old to itinerate on foot, his own house became his chapel, and here he held forth daily, with or without an audience, save a good old wife, who, like the good Kadijah, believed the prophet when no one else would. With poverty around him and starvation staring him in the face, he trusted for his bread at the hand of Providence, with a faith worthy of Elijah, and sang with raptures:

“His saints what is fitting shall ne’er be denied,
So long as ’tis written, the Lord will provide.”

Here was a well defined case of religious monomania.

But what fact is there in the life of J. W. Piatt to show that he was a religious monomaniac? Here the rule of law applies with peculiar force: not the opinions of the witnesses only, but the facts, must be given.

Mrs. Louise Piatt tells us, that “he could not talk for ten minutes, on any matter, before leading the conversation into religion. I never saw him, that our conversation did not ultimately lead into this same theme. It was the same with others when I was present. He seemed to be imbued with the belief that such was his mission. We have conversed hours on Catholicism.”

The same idea is held out by Dunn Piatt and T. K. Smith—

that the testator was a sort of spiritual Don Quixote, going about in quest of adventures, and laboring under an insane delusion that he was called of God to the work of making converts to the Church. If he had labored under an insane delusion that it was his duty to make converts to the Church, he would unquestionably have been heard from in a city of two hundred and fifty thousand inhabitants. Ignatius Loyola, himself, had not a stronger will, a more ardent temper, a more untiring industry, than J. W. Piatt. He was a man in easy circumstances, could command money at pleasure, and had no excuse for idleness. What was the extent of his missionary labors? How many converts did he make? How many did he attempt to make? To whom did he speak on the subject? Whom did he attempt to force into the Catholic Church? He tried to persuade his sister, Louise, to become a Catholic. He recommended religion, instead of politics, to T. K. Smith, and advised him to read certain religious books. He made an affectionate appeal to his father to come back again to the Church from whence he had strayed. And he advised his son to investigate the claims of the Church. This is all—absolutely all! Seventy-one witnesses have been examined—all of them, or nearly so, his intimate acquaintances—and not an instance, except these four, can be found. Even his brother Dunn, who needed religion as much as most people—his uncle Abram, who needed it almost as much—and his affectionate cousin Ben, who was about his person so much, and did him so many offices of kindness in his last days on earth—were never spoken to on the subject. If an earnest, honest man, recommends the religion he believes, and in which he hopes for salvation, to four, and only four, of his nearest relatives, it is absurd to denounce him as a religious maniac. There is a degree of extravagance in the statement unbefitting the sober reality of the case. Taking all the testimony together, and allowing some degree of credit to other witnesses, there perhaps never was a religious man less obtrusive in the advocacy of his own religious views, or who meddled less with the views of others. Judge Storer, a witness on the other side, who knew him intimately for thirty years, and down to the day he was disabled by the saw-cut in his knee, says: "I never had any par-

“ticular conversation with him on religious subjects. I have heard him, in the general, express his opinions on his peculiar faith; but never, that I recollect, was he obtrusive or disposed to proselyte. He was very warm in the mode of his expression, but never to my knowledge offensive to others.” Judge Spencer says: “I was intimately acquainted with the late Jacob W. Piatt, from the earliest recollections of my boyhood—say forty years.” Again: “I am not a member of the Catholic Church, and I do not know whether Mr. Piatt was or was not in the habit of using exertions to proselyte to that Church among his intimate friends. He never exerted himself toward me in that matter—and I have heard nothing on the subject in regard to others.” Mr. Van Matre, who knew him intimately and practiced law with him upward of thirty-five years, says: “During all my acquaintance with him, I do not recollect of his ever attempting to influence my religious opinions, nor the religious opinions of others.” The Rev. Edward Purcell, who had been well acquainted with him for twenty years, says: “I do not think that he was enthusiastic, much less fanatical, in his religious views; but he believed firmly and was very ardent. Such he appeared to me.” And this is the general tenor of the proof, wherever the minds of the witnesses were directed to the subject. But it is useless to compile all the evidence on this point. Enough is already done to show that, in the imaginations of these three witnesses, the interest which the testator felt in the religious welfare of three or four of his own family, is magnified into a general madness on the subject of religion—a kind of rampant knight-errantry in religion sufficient to derange his general understanding and disqualify him for business.

But to establish the religious insanity of the testator, it is said he made harsh and unnatural allusions to his own father in his religious controversies, consigning him to perdition, and so on. Smith, Abram S., Dunn and Mrs. Louise Piatt, all relate similar stories about this—the instances referred to, doubtless, being identical. This will turn out another exaggeration of the truth, and a review of the lady’s statement will show that the witnesses, and not the testator, lugged their venerable father into these controversies.

To understand this matter rightly, we must first understand the difference of religious faith between two divisions of the Piatt family. One division are orthodox Christians after the order of the Roman Catholic Church. Another division are Free-thinkers after the order of Jefferson and Franklin. The Roman Catholic division, at the head of which stood Jacob, believe, as other orthodox Christians do, in salvation through the atonement of Christ and the ordinances of the Church. The Free-thinking division, comprising the old gentleman and these witnesses, expect salvation through their own good works.

It is not the business now in hand to combat the doctrine of these people. It was the faith of Jefferson and of Franklin.

Here, then, was the source of contention. Mr. Piatt desired the salvation of his brethren and sisters through what he conceived to be the only door; and they expected to climb up some other way. If he argued with them at all, by a law of his nature he was bound to do it with zeal and impetuosity. The principal argument used by them, was, to remind him how good a man his father was, and tell him that his ideas of salvation would exclude his own father from Heaven. In this way the father was dragged in, not by Jacob, but by his brothers and sisters.

If ever any man merited Heaven by truth, honor, justice, charity and benevolence, it is Benj. M. Piatt, sr. In all these things, his life might put a majority of Christian professors to the blush; so that, while one can not excuse the coarseness and indelicacy of such an argument, it must be admitted to be an argument *ad hominem* of great power.

But J. W. Piatt was too well grounded in this cardinal doctrine of Christian faith to expect God to provide one plan of salvation for B. M. Piatt and another for the rest of mankind. He desired for his father something more than mere morality, before he should be called to die. He desired for him an interest, through faith, in the blood of the Redeemer. And hence, the expression which shocked his friends so much: "The only hope I have for father, is that, before he dies, he will be convinced and kiss the cross, if it should be on his death-bed."

The doctrine of vicarious atonement is a great mystery, and faith in it is always expressed in figurative language. To lay hold on the Cross—to bow to the Cross—to hang upon the Cross—to embrace the Cross—to take up the Cross—to lean upon the Cross—to kiss the Cross—are a few of the expressions used in all orthodox Churches; and “no Cross no Crown” has been a maxim for hundreds of years among Christians. It is to this faith in the Cross, or what was enacted on the Cross, our Lord alludes when he says: “As Moses lifted up the serpent in the wilderness, even so *must* the Son of Man be lifted up, that whosoever believeth in him should not perish but have eternal life.”

Benjamin M. Piatt did not construe the solicitude of his son for his salvation as these witnesses do. He is a man of sense, a man of the world, a man of moderation—a man who, having had the advantages of a religious education, understood what was meant and appreciated what was felt by his son on his behalf too well to run into such gross folly.

This leads to the consideration of another matter put forward to prove the testator insane about religion. Mrs. Dunn Piatt relates one occurrence, the only thing approximating a fact which either she or her husband can remember to have taken place, while the testator was at their house on Broadway for the last time. This was the last appeal which Mr. Piatt made to his venerable father to return to the Church. In reply to this plain question, “Will you please to repeat some of these conversations, in his own words, as nearly as you can?” she says: “It would be quite impossible for me to give even the substance of disconnected sentences, such as Mr. Piatt indulged in when speaking on religious subjects. I was present at a scene which took place at my own house a few days before his death, which will, perhaps, better illustrate what I am asked to explain, than a repetition of language. His mother and father and my husband and I were present, when he began talking to his father on religion. His words and manner were such as to impress all present with the painful belief that they were the insane utterances of a mind enfeebled by disease. He cried like a child, and nervously played with the brass of his rosary. Every one present forbore answering him for fear of in-

"creasing his excitement. At one time, when my husband began speaking, his father, Benjamin M. Piatt, thinking that he was going to reply, held up his finger in a deprecatory manner." She is asked to give the testator's words: she gives a description of a mere pantomime—a dumb show, in which not one word or idea of the testator is either remembered or repeated—such an account as might be expected from one who was deprived of the sense of hearing.

There is a prose version of this same story by Benjamin M. Piatt, sr., which it is proper to give in his own words, before further commentary: "As I stated before, he was a devout Catholic, as I learned from himself, his conduct, actions, &c. "The *only* thing he ever said to me on the subject, was, that "I, once having been a Catholic and left the Church, he wanted me to return to it; and the last time he ever broached that subject to me was at my son Dunn's house on Broadway. I think Bishop Purell was present, but will not be certain. I told him I could not comply with his wishes without being a hypocrite, and I knew he did not want me to be that. * * He said that he wished me to return to the Church. That it was safe as to salvation; and that I was at the head of a large connection, and it would have a beneficial influence, having children and grand-children, and all that kind of talk."

There is an exact concurrence of time and place between the young woman and the old man—they both refer to the same interview. But there are points on which they differ widely: the young woman declares herself unable to remember even the substance of what the testator said—the old man remembers and states, not only all the substance, but most of the words which he used. The young woman says: "His words and manner were such as to impress *all present* with the painful belief, that they were the insane utterances of a mind enfeebled by disease." The old man was impressed with no such "painful belief"—for he testifies, elsewhere, that, except when he had his paroxysms of pain, he never discovered in the testator any signs of mental aberration. The young woman states, that "every one present forbore answering him for fear of increasing his excitement"—the old man states that he did answer him, and he gives us the answer, "I told

"him I could not comply with his wishes without being a hypocrite, and I knew he did not want me to be that;" and this answer seems to have satisfied him. Now, while the laws of gallantry may require us to admit that the young woman had the more mature judgment—truth requires us to admit that, in the matter of memory, the old man has greatly the advantage over her. To get rid of the simple, plain and truthful narrative of the good old father, and to let Dunn in with an adverse statement of this religious interview on Broadway, new testimony is introduced, at the last hour, to prove that the old gentleman has lost his memory and is not fit to be a witness. Doubtless his memory, as to minute particulars, is not so full as it once was. In youth, the perceptive and retentive faculties are stronger than after the reflective period of life comes on. As men grow older and wiser, they no longer burthen their memories with unprofitable details, as they once did. But are they less fit to testify on that account? Unless the memory, from disease, becomes fallacious, may not the narrative of the witness be relied on as far as it goes? Ought not the witness, called to impeach the memory of another, be able to state some instance in which he has known his memory to be oblivious, false or fallacious? If he can not recollect such an instance, he is himself unfit for a witness. Doubly unfit—because, first, his own memory has failed him; and, secondly, he is reckless enough to swear to what he does not know.

None of these witnesses has given us an instance—and we must be excused from giving credit to their mere opinions. Moreover, there is a conflict of witnesses as to whether the old gentleman's memory has materially failed. To settle this conflict, it is proper to look into the old gentleman's testimony, and see what are the internal evidences. He is grouped with several other witnesses, between whose testimony and his, so far as it goes, there is an exact agreement. He is contradicted in no part of his testimony till he comes in contact with the Broadway junto—who contrive to contradict every body, themselves among the rest. Besides the internal evidence which his deposition furnishes, we put in evidence three of his letters to his attorneys, Johnston & Carroll, on business. If any one will read these letters over carefully,

and pretend that they do not evince a clear mind, and a good memory for a man at any time of life, then the idea of internal evidence may as well be yielded up to the fanciful opinions of witnesses.

There is but one of these impeaching witnesses whose position puzzles one: that is Mrs. Gen. Worthington. This lady is the sister of the testator, and must have known the condition of his mind as well as any other member of the family. Why was she not asked to testify to this point at once, instead of going round about to impeach the memory of her venerable father? Hush! Gen. Worthington had borrowed several thousand dollars of the testator the day before he died, and it would have been indelicate for his wife to have testified on this point!

Parties can not, in this way, get rid of the old gentleman's account of this religious interview on Broadway. It was to him, as a man who knew how deeply religious feelings take hold of the affections, a solemn and affecting scene, such as he would not be likely to forget, even if his memory was bad. His ability to relate the arguments on both sides, after both these young people have forgotten them, proves that the occurrence was deeply rooted in his memory: and his simple narrative is not likely to be shaken by the coarse, rude and unnatural version of Dunn Piatt, added to the highly colored and poetic account of his wife.

But let both accounts stand, so far as they can stand together. Let it be conceded that these two witnesses give the *manner*, and the old man the *matter*, of this interview; what does it amount to? Simply this: a man of ardent, impetuous temper, knowing that he is about to die—believing honestly in the truth of his own religion, and preferring his own Church to all others—sees a father, whom he loves and all but adores, standing outside of what his Church teaches to be the pale of salvation; with tears in his eyes and emotion in his bosom so strong as to shake his feeble frame, he implores him to come back again to the fold from whence he had strayed! If he had not felt this solicitude for his father, he would have been false to all the better impulses of his nature. If he had not made this last appeal he would have

given the lie to his own character as an ardent, impulsive and earnest man.

Every one acquainted with the biography of pious men and women, or who has stood by the death-bed of pious persons in possession of their faculties, must be familiar with scenes like this. Following Mr. Piatt's life down still nearer to its close, we find him calling around his death-bed all the working men and women on his farm, and all the household servants, to join with him in prayer; and, when prayers are over, we hear him giving them his parental blessing and advice, and making a last effort to reclaim a poor drunkard. We see him sending for a poor Irish woman, the wife of one of his servants, on whose feelings his ungovernable temper had inflicted some injury a year before, to ask her forgiveness; and, when she grants it, he asks her to pray to God that he may have a smooth pillow. All these things accord with the true character of the man, as modulated and attuned to the tenderest touches of kindness by the power of religion.

Religion was the rock of offense on which his infidel relatives stumbled. What was to Jacob W. Piatt "the power of God and the wisdom of God," was "to these Jews a stumbling block and to these Greeks foolishness." If these witnesses had stood by while Paul preached before King Agrippa, relating his own religious experience and unfolding the sublime mysteries of the Gospel, they would have joined Festus in exclaiming, "with a loud voice: Paul, thou art beside thyself; much learning doth make thee mad." Or, if they had been present on the day of Pentecost, when the Holy Ghost descended on the congregation like a rushing mighty wind, and when the mixed and miscellaneous throng, with cloven tongues, began to declare "the wonderful works of God," they would have joined with the mockers, and said: "These men are full of new wine." Or, if they had been present when Nicodemus came to Jesus by night, and heard the new and startling announcement: "Verily, verily, I say unto thee, except a man be born again, he can not see the kingdom of God," they would have joined with Nicodemus in the curious inquiry: "How can a man be born when he is old? Can he enter a second time into his mother's womb and be born?"

Another of the badges of insanity, or religious monomania, relied on by these witnesses, in support of their opinion, is thus expressed by Mrs. Louise Piatt: "There is a priest, in Fulton, by the name of McMahan, who professes to cure all "diseases in a miraculous way, by the efficacy of his prayers;" and she alleges that both the testator and his wife believed in this man's power.

There is a confusion and confounding of ideas here, into which the witness falls, for want of a better knowledge of the Scriptures, to say nothing about theology. The power to work a miracle is a supernatural power—a power to reverse the order of nature—to say to the dead, "come forth," to the lame, "rise up and walk," to the leper, "be thou clean," and so on. Such was the power exerted by our Lord during his three years' ministry; such the power conferred on his seventy Disciples when he sent them out to plant his Church.

But such power is not claimed for the ministers of any church at this day. Such a power is not professed by Father McMahan, or any other Catholic priest. But there is a belief, common to all Christians, that sick persons are sometimes recovered by the power of God, in answer to the prayers and faith of good people. This is what Father McMahan professed: this is what Mr. and Mrs. Piatt believed. The very fact mentioned by the witness, that "*prayer*" was the mean employed, proves this, because prayer never was a mean by which miracles were wrought.

Mr. Piatt, then, and his wife, too, are proved to be insane because they believed, in common with all pious Jews and Christians, that, on behalf of the sick, "the effectual, fervent "prayer of the righteous availeth much." To one who has basked and fluttered like a butterfly in the sunshine and flowers of St. Cloud, and sipped the poison of infidelity from the writings of Byron and Sue and Shelley, and come home with a head filled with French philosophy, French politics, French morality, French religion, French manners and French fashions, this homely old idea is proof of insanity.

But it is the doctrine of the Holy Scriptures. It was the doctrine of the Jews. It is the doctrine of the Christians. It is at this hour the doctrine of all religious denominations,

from the Roman Catholic to the Unitarian Church. Let us look for a moment into the authorities on this point:

I Kings, xvii, 17, we have this record: "And it came to pass "after these things, that the son of the woman, the mistress "of the house, fell sick; and his sickness was so sore that "there was no breath left in him. And she said unto Elijah, "what have I to do with thee, O thou man of God? Art "thou come unto me to call my sins to remembrance, and to "slay my son? And he said to her, give me thy son. And "he took him out of her bosom and carried him up to a loft, "where he abode, and laid him upon his own bed. And he "cried unto the Lord, and said: O Lord, my God, hast thou "also brought evil on the widow with whom I sojourn, by "slaying her son? And he stretched himself on the child "three times, and cried unto the Lord, and said: O Lord, my "God, I pray thee let this child's soul come into him again. "And the Lord heard the voice of Elijah; and the soul of the "child came into him again, and he revived."

Isaiah xxxviii, 1, we have this record: "In those days was "Hezekiah sick unto death. And Isaiah the prophet, the "son of Amoz, came unto him, and said unto him, thus saith "the Lord: Set thy house in order; for thou shalt die, and "not live. Then Hezekiah turned his face to the wall and "prayed unto the Lord, and said: Remember now, O Lord, I "beseech thee, how I have walked before thee in truth, and "with a perfect heart, and have done that which is good in "thy sight: and Hezekiah wept sore. Then came the word "of the Lord to Isaiah, saying: Go and say to Hezekiah, thus "saith the Lord, the God of David thy father: I have heard "thy prayer, I have seen thy tears; behold, I will add unto "thy days fifteen years."

The Old Testament Scriptures abound with instances similar to these; and, when we turn to the New, they are replete with instances of the power of faith and prayer in healing the sick. James v, 14, we have this direction from an Apostle who learned his doctrines from the lips of his Master:

"Is any sick among you? let him call for the Elders of the "Church; and let them pray over him, anointing him with "oil in the name of the Lord; and the prayer of faith shall "save the sick, and the Lord shall raise him up; and if he

"have committed sins, they shall be forgiven him. Confess
 "your faults one to another, and pray one for another, that
 "ye may be healed. The effectual, fervent prayer of a right-
 "eous man availeth much." Lightfoot, Henry, Gill, Scott,
 Benson, Clarke, and all, even the most modern, commentators
 understand this passage in the same way.

The Book of Common Prayer, following this direction,
 has this form of prayer for the recovery of sick persons:

"O, Father of Mercies and God of all comfort! our only
 "help in time of need: Look down from heaven, we humbly
 "beseech thee, behold, visit, and relieve thy sick servant, for
 "whom our prayers are desired. Look upon him with
 "the eyes of thy mercy; comfort him with a sense of thy
 "goodness; preserve him from the temptations of the enemy;
 "give him patience under his affliction; and, in thy good
 "time, restore him to health, and enable him to lead the resi-
 "due of his life in thy fear and to thy glory," &c.

The journals and biographies of pious men, of all ages, re-
 cord examples of the effects of faith and prayer. Wesley's
 Works (vol. iv, page 499) contains one of them: "Immediate-
 "ly after [preaching] a strange scene occurred. I was desired
 "to visit one who had been eminently pious, but had now
 "been confined to her bed for several months, and was utter-
 "ly unable to raise herself up. She desired us to pray, that
 "the chain might be broken. A few of us prayed in faith.
 "Presently she rose up, dressed herself and came down stairs,
 "and, I believe, had not any further complaint."

Lest the case of Mr. Piatt, who, when in an agony of pain,
 laid the hand of a pious minister on the suffering part and
 begged him to pray for him, and thought it did him good,
 should stand entirely alone, let us make another quotation
 from the same author (vol. iv, page 559): "Wed. 24.—The
 "floods caused by the violent rains shut me up at Longwood
 "House. But on Thursday the rain turned to snow; so on
 "Friday I got to Halifax, where Mr. Floyd lay in a high
 "fever, almost dead for want of sleep. This was prevented
 "by a violent pain in one of his feet, which was so swelled
 "and so sore, it could not be touched. We joined in prayer
 "that God would fulfill his word, and give his beloved sleep.

“Presently the swelling, the soreness, the pain, were gone; and he had a good night’s rest.”

There is not a pious man in Kentucky, who keeps up worship night and morning with his family, who does not daily remember the sick and afflicted in his prayers; and the custom is universal, in all Christian Churches, of every name, to ask the prayers of the congregation for sick persons in the neighborhood. It is but a few months since, that the Rev. Mr. Conway, in a Unitarian Convention at the East, offered a resolution of sympathy with Theodore Parker, then in ill health, and pledging the Convention to pray for his restoration to health. Why, then, should Jacob W. Piatt be accounted insane for believing what every other Christian believes? He believed that the prayers of Father McMahon, on behalf of sick persons, had been answered. This is all. How strong his faith was in the efficacy of his prayers in his own case, will be better judged of when we remember that, on his last visit to Cincinnati, he spent several days in the city without calling on Father McMahon, or Father McMahon calling on him.

Another proof of the supposed insanity of the testator, is, that he had no more sense than to burn a large library of valuable books. According to the testimony of Dunn, Abraham S., Louise Piatt and Smith, he spoke of burning his books once, perhaps several times. The lady’s account of it is the fullest, and runs thus: “Some time in the winter of ’56-7, he *announced* to me his intention to burn all his books except those of a Catholic or controversial character, on the subject of religion. He had a *splendid library* at his residence, which he had been collecting for years, and in such collection, arranging and reading, he had his chief delight. When I urged him not to do this, but to give the books to his brother Abram, who had not the opportunity of collecting so fine a library, he replied, that would be scattering moral poison, and he intended to make a bon-fire of them. As he had *all* the standard English authors, I said to him, you are surely not going to burn Shakspeare, Milton, Shelley, &c.; to which he replied, yes, I am going to burn them all.”

From the account given by Abram S., corresponding in so many of its features with this lady’s account, it is probable

he was present on this occasion; though there is this difference between the two witnesses—she believes he spoke in earnest, and he does not. In Dunn's account, there is some additional extravagance, as that he had taken the advice of his Father Confessor, who had advised him to burn them all. No one ventured to ask Dunn whether he believed his brother was in earnest, and we have not the advantage of his views of this matter.

It is useless to join issue with this lady on the questions, whether a six-horse load of literary rubbish, interspersed with Shakspeare and Milton and Burke and Clarendon and Gibbon and Hume and Bolingbroke, like the gouts of gold in the sands of California, is a splendid library; or, whether the testator had in his collection *all* the standard English authors; or, whether a man who toiled by day and by night in the drudgery of a law office, for the purpose of making money, did in fact have his chief delight in arranging and reading a miscellaneous library. All that is necessary to be known about this library, at present, is, that it was purchased at auction, in lots, good and bad together; and that such books as were offensive to good morals and common decency, as Hot Corn and Rabelais, were picked out and thrown in the fire. But it is doubtful whether he *announced* a purpose to destroy this library, in the deep and solemn sense in which that word is used. It is doubtful whether the threat to burn these books was not one of those "*exceedingly rash*" expressions, of which Judge Storer speaks, and which we know, from the proof, he was apt to make in his best days, when excited. It is doubtful whether it was not made in the heat of excited controversy with his sister Louise, who writes books, and his brother Abram S., who writes poetry, about the merits of worthless literature and infidel writers. It is doubtful whether any thing was said which ought to have been believed by any one who knew the testator's peculiarities, except a lady who preferred being credulous to having her self-love wounded by the idea that her sarcastic old brother was making ridicule of book-makers. It is doubtful whether all he said imported anything more than the threat of a sportsman to blow out the brains of a wayward dog, or to cut the throat of a stumbling horse.

If Mr. Piatt had burnt all his books, we might have ad-

judged him to be insane at the time. If he had burnt none of them, we would have regarded his threat to burn them as one of those expressions which men make, thousands of times, without meaning anything by them. But he did seriously intend to burn some of his books, and he carried out that intention. Out of 1800 volumes he burned two, not to be named among Christians. This furnishes us with a sort of rule of three by which we can measure and determine the real weight of testimony: as 2 volumes are to 1800, so is the sober reality to the excited imaginations of witnesses.

In further proof that the testator labored under religious mania, it is asserted that his mind was so poisoned with prejudices against every man and every thing that was not Catholic that he was not capable of doing justice.

To this end, the school question, so called, and the part Mr. Piatt took in it, are brought into the case. Mr. Piatt, like many other good Catholics, and many good Protestants, was dissatisfied with the school system of Ohio, as administered in Cincinnati; and in the City Council, and on the stump, he took a part in the discussions of the day on that subject. What his arguments were, the testimony does not show. That which is made to appear in this case is a collection of the harsh things he said on several occasions.

In order to understand these, we must figure to ourselves an honest man, surrounded by busy-bodies springing into ephemeral importance in the organization of the American party—misunderstood by the ignorant, misrepresented by the wicked, hunted down and bayed like a wild beast by bigots, and burned in effigy by the rabble. We must also consider the character of the man. Mr. Piatt was not one of those meek and patient martyrs who hug the stake at which they burn. When the hand of God was upon him, he submitted patiently, believing it was all for the best; but not so when his fellow men did him wrong. Then, he would fight for his rights; and, if he fell in the contest, it would be

“With his back to the field and his feet to the foe.”

As he thus stands, fighting for his rights, let us inquire what were his natural weapons and modes of war? Naturally, he had a strong, unyielding will, that never surrendered. Nat-

urally, he had an irritable temper, easily provoked to anger, and ungovernable when angry. Naturally, he was exceedingly rash in his expressions, when in a state of excitement. Naturally, he had great powers of sarcasm, and was unsparing in the use of this talent. Was it not, in such circumstances, perfectly natural for him to say harsh things?

Let us, then, drop out these harsh words, which meant nothing then and mean still less now, and inquire, for a moment, what was the topic then before the public? In Ohio, the common schools are supported by a tax on the property of every body. They are State institutions, which take out of the hands of every man the education of his own children. The parent, as an individual, has nothing to do but pay his tax and send his children to school. The State builds the school house. The State selects the school books. The State employs the teacher. The State selects and purchases the circulating school library.

That the books thus selected are, to a certain extent, sectarian, must be admitted. Among other books which Roman Catholics consider sectarian, is King James's translation of the Holy Scriptures; an opinion quite as well founded as that entertained by Protestants in regard to the Douay Bible. An honest, unprejudiced man can read the one with as much pleasure and profit as the other. They are both good translations, but neither is perfect—neither free from errors. King James's translation was made in highly exciting party times, when the best of men scarcely knew their own hearts. The bloody and brutish reign of Henry the Eighth—the milk-and-water reign of Edward the Sixth—the bloody reign of Mary, and the magnificent tyranny of Elizabeth, had swept in terrible succession over the nation, and left the earth smoking with the blood of martyrs on both sides: and the Catholic Church, robbed by Henry, and trodden under foot by his haughty daughter, abhorred the reigning powers. At this juncture, James the First of England mounted the throne. Naturally a narrow-minded bigot, and, by education, a Scotch Presbyterian, he was imbued with the belief that the Roman Catholic Church was none other than the Babylonish whore of the Apocalypse; and he had done homage to Elizabeth, and kissed her hand still red with the blood of his Catholic

mother. He called together fifty-two learned men of his own way of thinking, to translate into the English tongue the Holy Scriptures. That they did their work as faithfully as the frailties of human nature and the high party excitement of the times would admit, should not be doubted. But the Catholics never were satisfied with it—they never admitted it to be reliable; and although they read it (and, as it would appear, the testator had several copies of it in his library), yet they never were willing to have it forced on the minds of their children as an infallible standard. Besides, they regard the business of teaching religion to be the business of the Church and not of the State; and they claim for themselves the right of superintending the spiritual instruction of their own children. To this end, they claimed (as they had done successfully in New York) their proportion of the school fund, drawn by taxation from their pockets, that they might manage it in their own way. Here was the head and front of Mr. Piatt's offending. He advocated the Catholic side of this question, and what he advocated he advocated, according to the laws of his nature, with zeal, with earnestness, with impetuosity, occasionally with rashness. If we had a faithful report of all the wise and reasonable things he said on this subject, the case would appear very different; but his speeches were assiduously garbled, first for the newspapers at the time, and then for this case, and the rash and offensive things which he said only are reported. But all these speeches on the school question were made as early as the spring of 1853, before his brother Dunn had gone to Europe, or his kinsman Smith to Washington, and before either of them had discovered the melancholy change—at a time when no witness, however unscrupulous, pretends that he labored under insanity, either total or partial, and when he was in the enjoyment of health as full and vigorous as he ever had in his life.

In collecting this testimony, reference was had to the political aspect of Boone county, and the prevailing prejudices in that quarter against the Catholic religion. Surely, it is not expected such things will have any weight in the highest judicial tribunal of Kentucky.

To sustain this idea of deep-rooted prejudice against Protestants, it is asserted that he had no confidence in any man

who was not a member of the Catholic Church—and that he so declared. Dunn Piatt's version of what he said to his father, on Broadway, in which some such language is attributed to him, is not infallible; and, as to what he said to Dr. Murphy, the circumstances under which he said it must be taken into account. The Doctor was at Mr. Piatt's house for the purpose of making love to the daughter. Mr. Piatt might not have thought him a suitable match for her on various accounts; but the objection which was most tangible, and that which would be least offensive to the Doctor's pride, was, that the daughter was a pious Catholic, and the Doctor had no religion, and anti-Catholic principles. Had the Doctor directly asked permission to address his daughter, this would most probably have been his objection. As it was, he nipped in the bud all the Doctor's tender aspirations, by informing him that he had not much confidence in any young man who did not belong to the Church. This was, no doubt, the occasion on which the Doctor's idea that Mr. Piatt lacked common sense took its ground; and, by a disagreeable association of ideas, it has clung to him with the pertinacity of an insane delusion ever since.

But the best way to settle this matter is not by the occasional remarks of the testator. God forgive us all! I fear it is too common for the best of us to make uncharitable remarks about the Churches and Societies to which we do not belong. I fear me, that, if our brothers and sisters, and nephews and nieces, who sit around our firesides and listen to the thoughtless, unguarded, peevish or jocose remarks we make about our neighbors and their religion, should volunteer, after we are dead, to remember and repeat such things, we should have scenes in human life which would disgust the hyena with his trade. If we wish to know the truth, we ought to inquire, rather, what a man has done than what he has said. A man's acts are a truer index to his real thoughts than the words of passion and excitement he may happen to utter. It is especially so with a man like the testator, who is proved to have been exceedingly rash and unguarded in his words, and exceedingly cautious and prudent in his actions. Let us then inquire, What acts are in evidence on this point? whom did he dismiss from his employment, with whom did

he refuse to trade, from whom did he withdraw his patronage, in whom did he refuse to confide, because they were Protestants. On what worthless man did he lavish his bounty, in what dishonest man did he confide, what faithless wretch did he employ, because he was a Catholic?

He all but adored his venerable father, who had abjured the Catholic faith. Whether he had confidence in his Protestant brothers as business men, or not, the proof shows his uniform kindness toward them. Residing in Kentucky and doing business in Cincinnati, he ordinarily ate his meals at the table of an Old School Presbyterian; and when he was worn, and weary, and sick, and could not sleep, he came to his Protestant sister-in-law, to have her make his pillow of hops, and do for him a hundred other kind offices which none but a woman can do. When he employed a family physician in the city, he chose Dr. Thomas Wood, a born Quaker and a Protestant. He employed Dr. James Taylor, a Presbyterian, as his surgeon dentist for seventeen years, and continued to patronize him to the last. He had his dry goods account, in Cincinnati, at J. Shilito & Co.'s, a house in which there is not one Catholic interested. In Lawrenceburg, he dealt with Mr. Parry—not only a Protestant, but a Know-nothing. He gave his confidence and support to Judge Parker, an Episcopalian, and a candidate for a judgeship on the American ticket. No man in Cincinnati enjoyed more of his confidence and respect than Mr. Van Matre, another Protestant. In his supposed weakness and fanaticism, when his health decayed, we find no change in this respect. Protestants were as much as ever the objects of his confidence. When he was wounded with the saw, he sent for Dr. Harding, of Lawrenceburg, a Protestant, to be his surgeon, and called in consultation his old Protestant physician, Dr. Wood. When he came to make his will, the only Catholic who had anything to do in the matter was present by accident. His Protestant father went to Cincinnati for an attorney to draft the will. The attorney selected for this purpose was the same Protestant attorney whom he had employed and consulted, for several years, in his own cases and the cases of his father and family. The remaining subscribing witness, Benj. M. Piatt, jr., now a Methodist, and not a Catholic then, was specially re-

quested to be present to witness the will. When he made his last journey to Cincinnati, his Protestant cousin, Benj. M. Piatt, jr., by request, went with him, as his friend, to take care of him. His son, John H. Piatt, who is supposed to have been the peculiar object of distrust and hatred as a Protestant, was still retained and relied on as his confidential agent to the last—and, at the last, still confiding in him, he asks him to be a father to his little brothers and sisters after he should be with them no more.

Next to the company a man keeps and the men in whom he confides, we may look to his books to see what his sentiments are. Mr. Piatt had a large collection of books, which were his own companions in life, and are now the companions of his widow and children. Such as he considered unfit for that purpose, he committed to the flames in his lifetime. Among those which survive are several copies of King James's Bible, the Commentaries of Dr. Adam Clarke, the Sermons of Rev. Robert Hall, and the writings of Dr. Channing. Thus we see Protestants at large—Methodists, Baptists and Unitarians—represented in his library. When this whole matter is examined, we find the testator, though himself a member of the Roman Catholic Church, as liberal toward those who differed from him as religious men in general; and such is the concurrent opinion of numerous witnesses who knew him well. Dr. Harding, whose characteristic as a witness, next to truth, is that of caution, says: "Mr. Piatt was a Catholic in his faith. He frequently reverted to religious subjects, but I think not more frequently than persons commonly do who consider themselves dangerously ill. I have several times had conversations with Mr. Piatt with regard to his religious faith, and have heard him express himself warmly and confidently in regard to the faith and doctrines of his Church; but I am not aware that he exhibited more prejudice or firmness with regard to the tenets of his Church than is common to men of strong and impulsive minds." And Judge Storer, speaking of the same subject, says: "I have heard him, in the general, express his opinions on his peculiar faith; but never, that I recollect, was he obtrusive or disposed to proselyte. He was very warm in the mode of his expression—but never, to my knowledge, offensive to others." And Mr. Van Matre, speaking of the same sub-

ject, says: "I never discovered any want of cordiality, courtesy "or confidence, on Mr. Piatt's part, on account of difference of "religious opinions. I considered him a man as liberal and "generous on those subjects as men usually are."

Michael Victor Daly, his student and partner and friend—with whom he conversed on every subject, even the most delicate—in whom he confided, and to whom, as a member of the same religious communion, he might speak freely, and to whom he would have spoken freely, if his mind had been poisoned by religious bigotry—bears this testimony: "I never, "in the whole of our connection, or since, heard him utter an "unkind or prejudiced word against any one, on account of "their religion. On the contrary, I knew him to have strong "partiality for some persons of a different faith. There never "was any feeling of this kind shown by him that I could see." Again: "I never heard him express any sentiment against, "or for, a person, because of the form of his religion."

Mrs. Stille' gives us what may be taken as a fair sample of those remarks to and about Protestants, out of which other witnesses have made so much: "I never heard him converse "on the subject of religion. He once told me, in a jocular "way, that, if I was a Catholic, I would be all that I should "be—or something to that effect. I expressed my surprise, in "the same jocular manner, that he should make that remark "to an Old School Presbyterian; and he said it was rather "presumptuous, or something to that effect, and there the "matter stopped."

Here, then, is the truth: Mr. Piatt, in regard to religion, making the proper allowance for the natural warmth of his temper, was just like other religious men.

This leads to some remarks on what the Broadway junto would seem to think was a course of unreasonable persecution toward his son, John H., on account of his religion.

A brief examination of the testimony will show that, unless it has a parallel in some other part of this case, so great a superstructure never was built on so narrow a foundation. No doubt, Mr. Piatt desired his son to become a Catholic; and this inference is not to be drawn so much from the testimony as from the universal law of human action. Every religious man desires his children to worship at the

same church with himself. The man so liberal as to desire, of a Sabbath morning, to see one of his children set off to the Catholic church, another to the Episcopalian church, another to the Methodist church, another to the Baptist church, another to the Presbyterian church, another to the Unitarian church, and another to the Universalist church, is not to be found every day. There is a decency and propriety in a whole family walking hand in hand to the same house of worship and worshipping at the same altar. The mere economist prefers it, because it costs less money to support but one Church; the mere votary of propriety prefers it, because the sons protect the daughters, and the grown-up children lead the little ones by the hand; the pious man prefers it, because all the ties of kindred and friendship are made stronger by the mutual bond of a common religion. Mr. Piatt desired his oldest son to be the companion and protector of his little brothers and sisters on their way to church, as, on his death-bed, he desired him to be a father to them when they should be fatherless. He had used some effort, no one knows what, to bring him over. He had requested a priest to converse with him on the subject; and, on his death-bed, he asked him to investigate the claims of the Church. This is all.

But did he persecute his son because he would not go with him to church? Mrs. Louise Piatt says: "Mr. Jacob W. Piatt was very unkind, unjust, and in fact insulting toward John on account of his religion. I *think* he lost no opportunity to say disagreeable things to him. Upon his return from church, his father would say: 'Well! what swaddler have you been listening to to-day?' On one occasion, in a conversation with Mr. Piatt, he said he could do nothing with John. He was so obstinate, that, instead of going with him to church, he would slip off and go hear some swaddler preach." Corresponding accounts, greatly intensified, are given by Dunn Piatt. But how many facts are there in evidence to support these sweeping assertions? When all comes to all, these witnesses are able to state a single occasion, one Sunday, at Dunn Piatt's dinner table, when he asked the son, on his return, (as they allege) from church, What swaddler he had been listening to, to-day? If we but knew what church

John had been at, or whether he had been at any church, we could form some idea as to the severity of this remark. The term "swaddler" gives us no clue to it. It is a word not to be found in any dictionary of the English language, and the witnesses have not told us in what sense the word was used by Mr. Piatt. It was a term first applied in Dublin to Mr. Cennick, one of Mr. Wesley's preachers, on the occasion of his preaching a Christmas sermon from these words: "Ye shall find the babe wrapped in *swaddling* clothes, lying in a manger." It was bandied afterward, for some years, against Methodist preachers, by Papists, Episcopalians and Presbyterians, and came to mean a traveling preacher, and, in time, a strolling preacher. If this is the sense in which Mr. Piatt used the word, it could not have had reference to the ministers of any Presbyterian church in Cincinnati; nor can we, from anything apparent in the proof, determine whether John had been listening to the serious discourse of a Protestant minister of the Gospel, or to the lectures of Abby Kelly on Slavery, or of Mrs. Nicholson on Free Love, or the Sabbath-day stump speech of some vagabond on the corruptions of Romanism.

Coates Kinney, for a short time an occupant of Mr. Piatt's office, gives us a long, vague account of his impressions and opinions as to the state of feeling between Mr. Piatt and his son, and his opinion that it was on account of differences of religious faith. This coldness and ill-feeling, so far as it went, is accounted for elsewhere, and grew out of causes which would have provoked any one, much more a man in bad health and naturally irritable. But what facts does Mr. Kinney state? Only one: The New York Observer, "a Protestant newspaper," came to the office directed to John, and the father said it was not fit for a young man to read, put it in his pocket and took it away. What is a *Protestant* newspaper? The word "protestant" once had a meaning. It meant such Christians as protested against the supreme authority of the Pope. But now-a-days any blaspheming infidel may assume the title of Protestant, and it would seem newspapers may be Protestants too. But what sort of paper was this New York Observer? What were the contents of this particular number? Who can say whether it was fit for a young

man to read? Nobody looked into it, except Mr. Piatt; and who, without looking into it, can say whether he acted rightly or wrongly in taking it away?

Next in importance to Coates Kinney's testimony is that of young Master Runkle, a nephew of the testator. The purpose of Master Runkle's testimony seems to be three-fold: to show, 1st, that John was hardly treated in his father's house and office; 2d, that Mr. Piatt was a great bigot in religion; 3d, that he was not competent to make a will. On all three of these points, Master Runkle gives us his *opinion* with great confidence. But let us have the facts. First, as to the hard usage; Mrs. Piatt having in her dormitory only four rooms for herself and her husband, seven children, and two servants, and all her country cousins, except the Runkles, sent John to sleep in a long, low room over the office, with no other furniture than a carpet, a bed, a bureau, a wash-stand, basin and pitcher, a few chairs, and a looking-glass over the bureau. The indignity offered the young man by his father in the office was still more degrading: once on a time, he was required to do the office of an amanuensis for his sick father, to the extent of writing one letter, and once or oftener to look after some law business before a justice of the peace; and this is what Master Runkle calls *drudgery*, when performed by an apprentice in a law office. It might be called drudgery in some office in the interior of Ohio, wherein Master Runkle studies.

We thus get a peep into the high notions of this young gentleman; and, considering the license of relationship, the peculiar caste of the testator's mind, his keen sense of the ridiculous, and his extraordinary powers of sarcasm, it is impossible such an object should escape him. He ridiculed his college, ridiculed his religion, ridiculed his idea of going to the West; punctured all his tumors as fast as they rose, on every subject. But it is remarkable that this witness never heard him say a word to John about religion—nor does he give us one instance evincing a lack of confidence in any one on account of religion. His conclusion on this subject is: "He did not seem to think there was any good in the Protestant religion. I think he blamed every body who professed it. *That is my opinion only.*"

Let us turn to his opinion of the testator's capacity to make a will. He saw him but once within the last year of his life, and that was the next day after he returned home from Cincinnati, five or six days after the will was made. He had but one conversation with him at this time, all of which he has detailed with great clearness. This conversation is remarkable for its good sense, and, as far as it relates to business, shows his mind to have been clear at that time; and (strange to say) it had not one word about religion in it. And, at last, the witness comes to this conclusion: "I did not judge of the state of his mind by what I heard him say during his last sickness, but by what I judged must necessarily be the effect of such terrible suffering." So that, unless the testator was suffering when he dictated and executed his will, this young man's idea of incapacity amounts to nothing.

The idea of general derangement and incapacity being out of the question, it is pretended that an estrangement took place between the father and the son, in which the father alone was to blame; and that this estrangement was followed up by relentless persecution on the father's part, and resulted in this will.

This is another mole-hill magnified into a mountain. The plain truth of the matter is this: Jacob W. Piatt was an irritable old man who wanted the son to follow his advice; John H. Piatt was a proud young man, who wanted to follow his own conceits. The father had been brought up in the backwoods to notions of economy, and was not ashamed to carry a parcel of goods under his arm, provided they were paid for. The son had been brought up in New England, amongst decayed aristocrats who expected servants to carry such things for them. The father's vote was challenged by a know-nothing, at the poll where he had voted for more than thirty years, on information furnished by the son: and he felt, on the occasion, as any other father would have felt. John had his uncle Foster in the United States' Senate, his uncle Dunn a secretary of legation at St. Cloud, and his cousin T. K. Smith in a clerkship at Washington, and he took the office-hunting itch and determined to go to the capitol to get some public employment. The father wished him to stay at home and

devote himself to business. There was nothing to make a great noise about on either side.

Such things are common to the lot of man. He is a happy father who has no worse a son. He is a happy son who has no worse a father.

But let us determine, by the acts of the parties, whether they were rent asunder by terrible and unnatural jars? Their actions will tell the tale more truly than words. At the time referred to, John was a full-grown, well-educated young man, able to battle with the world, able to support himself, and in no wise dependent on his father. Jacob was a man in easy circumstances, able to employ and pay clerks to do the copying of his office and agents to collect his rents, and was in no wise dependent on his son. Under the circumstances, it would have been neither a sin nor a shame on the part of either, if they had parted, like Paul and Barnabas. The father could have said, "My son, let there be no strife between us. You are your own master. I have done what I could to fit you for life and usefulness. If my mode of life is too rude, or my discipline too severe for you, go and seek your fortune elsewhere." The son could have said, "Father, I am grateful for all you have done for me: I am sorry I am not able to please you better. We can not live together in peace, and so let us part in peace."

But they did not part. Whether they were drawn together by the bonds of kindness, or gravitated together by the weight of interest, does not matter. They did not part. They stuck together to the last. The father trusted and confided in the son as his confidential agent while he lived, and fondly hoped that he would perform the same faithful offices for his widow and orphans, when he was gone. The son performed these offices faithfully, so far as we know, while the father lived, and stood like a dutiful son by his bed-side when he died. And, in the last moment, we find the father folding this son in his arms—not reproaching him for hearing swaddlers preach—not by fire and fagot compelling him to embrace the Catholic faith—not denouncing him as an heretic with bell, book and candle—not declaring that he had no confidence in him because he was not a Catholic—but affectionately ex-

plaining to him the ground on which he acted in making his will; and, next after the God he worshiped, committing to his care and protection all that was near and dear to him in life and in death—his widow and his orphans.

That prejudice against the son on account of his religious faith did not influence the testator in making his will, is further evident from the fact that he placed him on a footing of equality with his sister, Mrs. Jenkins, who is a member of the Roman Catholic Church.

VII.

A Jury have no right to substitute their own notions of fairness, liberality or equity, for those of the testator. The question is not: Is this a wise will? is it a just will? is it a fair will? is it a liberal will? but, Is it the will of the testator?

Cook vs. Gould, 1 *Haggard*, 577; *Sloan vs. Maxwell*, 2 *Green's Ch'y R.*, 563; *Greenwood vs. Greenwood*, 3 *Curtis, Appendix* 1; *Duffield vs. Robeson*, 2 *Harrington*, 381; *Davis vs. Calvert*, 5 *Gill & John.*, 300; *Burr vs. Duval*, 8 *Mod.*, 59; *Weir's Will*, 9 *Dana*, 441; *Tompkins vs. Tompkins*, 1 *Bailey*, 92; *Couch vs. Couch*, 7 *Alabama*, 519; *Baker vs. Lewis*, 4 *Rawle*, 356; *Ross vs. Christman*, 1 *Iredell (Law)* 209; *Goble vs. Grant*, 2 *Green's Ch'y R.*, 629; *Bettleston vs. Clark*, 2 *Lee, Ec. R.*, 229; *Martin vs. Walton*, 1 *Lee, Ec. R.*, 130; *Bird vs. Bird*, 2 *Haggard*, 142; *Waters vs. Howlet*, 3 *Haggard*, 790; *King vs. Farley*, 1 *Haggard*, 502.

Here arises the great objection to the verdict of the Jury. The jurors thought they were wiser than the testator—juster than the testator—fairer than the testator—more liberal than the testator; and, therefore, they have undertaken to make a will for him. Against this usurpation of power over the private rights and private property of a citizen, we have taken this appeal.

The will-making power stands not in the notion of equal distribution. The owner of an estate disposes of it, not according to any fixed rule of arithmetic, but according to his best judgment of what is best, upon the whole, for his children. They do not stand to him in the relation of creditors, but as the objects of his bounty. He gives more to this one,

and less to that, because one may be more needy, more helpless, more deserving, than another. The law considers every man of sound mind the proper judge as to how his bounty should be dispensed, and recognizes every sane man's right to do what he pleases with his own.

In case a man makes no will, the statutes, to put an end to strife, fix certain uniform rules of distribution. All other things being equal, these rules are just and satisfactory. But how many times would great injustice be done by following the uniform rule of the statutes. A man has reared, educated and set up, three sons and three daughters, at an outlay of two thousand dollars each. They are all settled in the world and doing well—each one of them in as eligible a position as the father. By a second marriage he has six young children, yet to rear, yet to educate, yet to set up, with all the chances of disaster and mishap before them. The remaining estate of the father is but twelve thousand dollars. If he makes a will and gives all he has to his six minor children, he will have done exact equality. If the statute makes the distribution, the older children, who are already provided for, come in for an equal share. The result is, that the six older children get three thousand dollars each, while the six younger ones get but one thousand.

Again: a man whose estate is small, may have lame, blind, or idiotic children, and, having liberally educated his helpful children, may feel it to be his duty to settle, by will, the bulk of his little estate on the helpless ones. The common conscience of mankind approves such a will; but the statutes never make such a will—they go upon the uniform idea of equality, leaving that of providence out of the question.

Again: a man's estate may have come wholly by a first marriage. He may marry a second wife, without either property or economy, who only wastes the estate acquired by the first marriage. It is not fairness that the children of the second marriage should be placed on a footing of equality with the children of the first; yet, by the statutes, they take share and share alike. So, too, if a poor widower acquires a large estate by a second marriage, it is not fairness that the children of the former marriage should share the estate equally

with those of the latter: but the statute makes no distinction between them.

Cases might be multiplied without number, in which the statutory distribution is neither equitable nor just, much less provident and wise. But these considerations have nothing to do with the question at bar, unless, indeed, the provisions of the will be such as to evince a want of testamentary capacity. The provisions of the will have been already discussed under another head; it may not be amiss now to look for a moment into the circumstances, to inquire whether, in point of fact, it is so unjust as gentlemen suppose. Jacob W. Piatt commenced life poor, and ended it comparatively rich. His fortune was all of his own making. His venerable father, in speaking of the will, says: "He did not make such a will as I would have made; but I thought it was none of my business. HE MADE WHAT HE HAD IN THE WORLD, and I thought he had a right to dispose of it as he pleased." His fortune was the result of hard labor and close economy, running through a period of thirty years. Like other poor young lawyers, the earnings of the first ten years must have been small. The decree of the Supreme Court giving the second wife, for her own support and that of her son, three hundred dollars a year, is a pretty fair indication of what his income was at that time. The bulk of his estate must have been acquired in the last twenty years of his active life.

He was three times married. The first marriage was a happy one. The lady would have been an heiress if she had lived; but she died before her ancestor, and the estate descended directly on her two daughters, Mrs. Shoemaker and Mrs. Jenkins. His second marriage was unhappy. Whose fault this was, it is better not to inquire. The fact that he lived happily for more than twenty years with a third wife, proves that he was not wholly in fault. Suffice it to say, she brought him nothing when she came—she deserted him before he knew himself to be the father of her child—and, by a decree of Court, she was awarded the custody of the child, and three hundred dollars a year. She lived to tax his earnings six thousand dollars, besides what he contributed to the collegiate education of the son. Whether the third wife brought him property, we do not know; but she brought him what was

far better. She brought him peace, prosperity and domestic happiness: and, by *his* industry and *her* economy, for more than twenty years, the estate in controversy was built up. Of the nine children this wife had borne him, seven were living when he made his will, ranging from fifteen years to six months old. He had already done a liberal part by his older children. They were liberally educated and set up in the world; and they were in circumstances to take care of themselves. The seven younger children were yet to be brought up, educated and provided for, and it would require a great part of his estate to do this; and if, in his estimation, the children of the wife who helped him to build up the estate had higher claims than the others, it neither proves him to have been unjust nor insane. If he was wrong, to any extent, in his estimate of the advantages his older children enjoyed, or the disadvantages the younger ones labored under, it was not the result either of total or partial insanity. No insane delusion is proved, and none to be inferred, from any thing he ever said or did.

VIII.

Where the proof shows that the provisions of a will accord with a long cherished and previously declared purpose of the testator, it rebuts the idea that such will was the result of improper restraint or undue influence exercised over him at the time it was made:

Jarman on Wills, 63; *Fullock vs. Allison*, 3 *Haggard*, 527; *Sewart's Ex. vs. Lispenard*, 26 *Wendell*, 255; *James et al. vs. Langdon*, 7 *B. Monroe*, 196; *Reed's Will*, 2 *B. Monroe*, 75, 80.

Here is a proposition of law fully sustained by authority, and in itself so obviously true as to admit of but little argument; because, when a testator has once made up his mind as to the disposition he intends to make of his property, and afterward carries out in making his will the purpose so formed, it can not be said, with reason, that such disposition was the result of improper restraint, undue influence, false information, unreasonable prejudice, mental weakness, or any other new cause existing at the time the will was made.

Our inquiry, then, in this place, is: Whether Jacob W. Piatt, for any considerable time before his will was made, had formed a plan in his mind for the disposition of his property.

Dr. Mudd's statement, which refers to John only, is this: "I do not recollect the year; but, upon the *first visit* of John H. Piatt to Cincinnati, and before he graduated at Yale College, during a vacation of the college, his father, Mr. Piatt, introduced him to myself and family as his son. It was about dinner time. After dinner, Mr. Piatt, his son and myself, went round to the office. Mr. John H. Piatt took a walk through the city. His father then remarked to me, that his son was a fine looking young man (he had not seen him before), and that he felt proud of him. He further remarked, that he intended to give him a first-rate education—educate him as a lawyer and set him up in business. Without any remark being made on my part, Mr. Piatt then observed, I DO NOT THINK THAT I SHALL LEAVE HIM ANY OF MY PROPERTY, OR words to that effect; I think the very words." And this is precisely what the testator actually did. He gave him a "first-rate education"—graduated him at Yale College. He "educated him as a lawyer"—graduated him at the Cincinnati Law School. He "set him up in business"—gave him his practice and his law library, and, besides this, "did not leave him any of his property."

Let it be borne in mind, that this conversation with Dr. Mudd took place before he had done any thing for his son, except what had been done by way of supporting him and his mother—the first time the son ever saw Cincinnati, and the first time ever the father saw the son's face. All the money he ever advanced him was after this; all the fourteen affectionate letters, which are in evidence, were written after this; all the imaginary jars about religion, about politics, about pride, about disobedience, took place after this: so that, what he did on the 19th day of May, 1859, was done after the reflection of four years.

But did he cherish this purpose in the mean while? He spoke to his attorney, about a year before the will now in contest was made, to draft a will for him; and, when told that the statutes of Ohio made as good a disposition of a man's estate as he could make himself, he said that "he agreed with the attorney, when there was nothing peculiar in the circumstances of the case; and he said that he had been three times married, and had three families of children; that

"his two older children, by the first two wives, were educated and set up in the world; that they had cost him a great deal of money (he did not say how much), and were provided for; that, by his third wife, he had a large family of helpless children, who were yet to bring up and educate; and that he felt it to be his duty to dispose of what he had for that purpose. He said education was growing every year more and more expensive, and there was no telling how much it would cost to bring up and educate his younger children."

This occurred about the middle of May, 1856, when as yet the sanity of the testator had not been doubted; and before the chief causes of offense described by Mr. and Mrs. Dunn Piatt—such as going to hear swaddlers preach, refusing to carry packages, causing the father's vote to be challenged, and so on—had arisen: so that, the resolution to devote the bulk of his estate to the maintenance and education of his younger children could not have been the offspring of offenses which had not yet been born.

Let us see whether the attorney is corroborated in his statement by any other witness. The Rev. Edward Purcell makes this statement: "I heard him speak of making his will, and the disposition which he thought he would make of his property. The children who were grown up, he thought were already sufficiently provided for; and he considered it his duty to provide especially for the children of his last wife, because they were young and had to be educated. That was all I remember of what he said. *This was within, or about, a year before his death.*" Mark the date—about a year before his death.

Is there any other evidence of the predetermination of Mr. Piatt, as to the disposition of his property? It must have been a topic of conversation in the Piatt family, or by the public at large—for Mrs. Louise Piatt, in speaking of what occurred before he was wounded, and when he was going about attending to out-of-door business, says: "I had heard rumors that he was going to make his will and cut John off; and, upon one occasion, just as he was leaving our house, I detained him and said, 'I wish, before you make your will, you would consult Archbishop Purcell.'" The matter was,

then, no secret. His determination was already known; and this lady and her family were on the alert, to *make*, to *mend*, or to *break* the will, as it might or might not suit their notions.

We thus have seen what Mr. Piatt intended to do for his son. We have traced that intention down from the day he first came to the West, in 1853, to the day the will was executed, and, after it was executed, to the day of his death. For reasons which were satisfactory to his own mind when in perfect health and before the slightest jar had occurred between them—for reasons which were still satisfactory to his own mind after his health began to decline—for reasons which were satisfactory to his own mind when he came to make his will—for reasons which continued to be satisfactory to his own mind when he refused to change his will—he did what he did for this young man: never either changing his purpose or assigning a different reason for it.

For the purpose of proving a different intention as to John, some testimony is offered on the other side. The statement of Dunn Piatt of an occurrence which took place in 1850, is supposed to have force in it. He says: "I do n't know that brother ever called on me to write his will while I lived on Fourth Street. Before I went abroad, I was waked up by a domestic to come to see my brother; he was very ill. I went to see him; he recovered in a few days. He spoke to me with feeling about John. Said that, as he was his child, he felt it to be his duty to recognize him as such, and treat him as his other children. This was said in connection with the subject of making the will. He said, in reference to John, that *he was unwilling to die and leave things as they were.*" Again, on cross examination, he says: "About 1850, brother sent for me to make his will." The omission of the questions, both in the examination in chief and in the cross examination, makes the answers slightly obscure; but the same occurrence is referred to in both. The witness states the facts without date in his answer in chief, and gives the date on cross examination.

Let it be borne in mind, that this occurred in 1850, three years before the negotiations were opened between Mr. Piatt and his son. The son did not come to the West till after Dunn and his wife had gone to Europe. His aunt, Mrs. Foster,

says: "In the fall of 1853, by the advice of one through whom she had received her alimony of \$300 a year from the estate of J. W. Piatt, decreed her by the Court in Ohio, my sister consented that her son should accept the urgent invitation of his father to visit him in Cincinnati, intimating that John's interests would be advanced by his so doing."

Before this time, Mr. Piatt had never seen his son's face. He only knew, from the information of others, that after his wife left him she had borne a son, whose custody was given to the mother by decree of Court. It would seem, from the testimony of Mr. McCullough, that a daguerreotype, or some other style of picture of the son, had been sent to the father; by whom, and for what end, does not fully appear. He had at one time doubted, or denied, the legitimacy of this son, and may have been using means to satisfy his own mind on this point. Be this as it may, the passions excited by real or imaginary wrongs had subsided. His better nature told him this child was his son; and he wished, in justice to the son, in justice to the mother, and in justice to himself, not only to place the seal of legitimacy upon him, but to aid him in acquiring a liberal education. This much is implied in what he said to his brother Dunn, and his uncle Abram—and nothing more is implied. He did not mention the subject of property to either of these gentlemen.

But let us meet Dunn's idea fairly, and see into what absurdity it runs. His brother was attacked with cholera in the night, and sent for him to write his will. To what end? Why, to put John on a footing of equality with his other children. "He was unwilling to die and leave things as they were." Jacob W. Piatt was no match for his brother Dunn in works of imagination; but he was an older, and, in 1850, a better lawyer. At all events, he knew enough about law to know that the surest and best way to put John on a footing of equality with the other children, was to make no will. In the absence of a will, the law would put him on a footing of equality with the other children. The only effect a will could have, in regard to him, would be to put him on a different footing. "As things were," John stood on the same footing with the other children. If he was "unwilling to die and leave things as they were," then he was unwilling to die

and leave John on a footing of equality with his other children. If he desired to make a will, that he might not "die" and leave things as they were," then the purpose of the contemplated will must have been to make some distinction between John and his other children.

There is another piece of evidence in the case, negative in its character, but sufficient to rebut the idea that he meant to do more for John than to give him a liberal education and fit him for business; or that, at any time, he held out the prospect of an estate as an inducement to John to come to the West. John put in evidence fourteen letters written to him by his father, after his first visit to the West and during his last two College years. These letters are written without restraint. They are the full and free out-pourings of a father's thoughts and feelings. They are full of anxiety for the son's success and prosperity in life—full of advice and encouragement as to his future career—full of valuable suggestions as to his application to study—full of solicitude about his health and habits: but not one word is said, directly or indirectly, about property.

The truth is, that his purpose in regard to this young man never changed, from the time he first recognized him as a child and took him under his protection, to the last hour when he refused to change the will.

Nor did his purpose vary in regard to his eldest daughter. He considered her, as he did the son, already as well provided for as he should be able to provide for his younger children. His purpose in regard to her is traced back one year before the will was made; and it was a fixed purpose, upon reasons satisfactory to his own mind—including, probably, the consideration that the bulk of his estate was won by the mutual exertions of himself and the third wife. But this belongs to another branch of the case.

IX.

Ardent devotion to the Church, and to the ministers of the Church, with which a testator stands connected—though it may exceed the bounds of reason and amount to fanaticism—is not sufficient to invalidate his will, unless his infatuation had disordered his general understanding so as to disqualify him for making a rational disposition of his property.

Weir's Will, 9 *Dana*, 439; *Norton vs. Riley*, 2 *Eden.*, 286; *Haquenin vs. Basely*, 14 *Vesey*, 273.

In the latter years of the testator's life, he was a member of the Roman Catholic Church, believed in its doctrines, conformed to its usages, and revered its ministers, as all honest Roman Catholics do: and this is all. He did not believe her doctrines more firmly, conform to her usages more rigidly, or reverence her ministers more sincerely, than is usual among professing Christians of other denominations. If he expressed himself more ardently, it is explained by reference to the peculiarities of the man. "Whatsoever thy hand findeth to do, do it with thy might," was a law of his nature, and he could not avoid it. He was not less ardent in politics, or in anything else to which he turned his mind.

We have an expression of opinion from Mr. Rairden, Dr. Murphy, and some others, that the ministers of his Church, especially his spiritual adviser, could have persuaded him to do almost anything. But there is not one fact in evidence to support this opinion. No instance is given wherein a priest was known to have influenced his mind in the slightest degree, in regard to his secular affairs; and we have in evidence several instances where they interposed their advice without success. The only thing which approaches a fact, is that stated by Dunn Piatt, that his brother informed him that he had been advised by Father Driscoll, on consultation, to burn his library. If this instance has any truth in it, it proves conclusively the converse of the idea: he did not follow the advice.

One thing is worthy of remark in this connection. Whatever Mr. Piatt's zeal for the Church may have been, he did not make her one of his legatees. He once had it in contemplation to make a contribution of a house and lot to a benevolent institution of the Church, but at last he did not do it: so that the Church, by the terms of the will, takes nothing, directly or indirectly—not one cent.

That his general understanding was disordered by too much religious zeal, or from any other cause, in the face of all the proof, is too preposterous to be seriously considered.

X

Where a will is sought to be set aside on the ground that the testator was under restraint when he executed it, the evidence should show that the restraint under which he acted amounted to moral or physical coercion, or was such as to destroy his free agency; and no importunity or influence, which does not amount to fraud or force, or to which the testator does not yield for the sake of peace, is sufficient to set aside a will, if the testator was of sound mind when he made it. And the exercise of restraint, fraud, importunity, or undue influence, is not to be presumed from the opportunity or the interest any one may have had to exercise them, but must be proved by competent testimony:

O'Neal vs. Farr, 1 *Richardson's R.*, 8; *Duffield vs. Robeson*, 2 *Harrington*, 375; *Miller vs. Miller*, 3 *Sargent & Rawle*, 267; *Potts et al. vs. House*, 6 *Georgia R.*, 359; *Shelford on Lunacy*, 209; 1 *Jarman on Wills*, 36 to 39; *Reed's Will*, 2 *B. Monroe*, 75; *M Daniel's Will*, 2 *J. J. Marshall*, 342; *Williams vs. Goud & Bennett*, 1 *Haggard*, 252; *Brown vs. Molliston*, 3 *Wheaton*, 129; *Means vs. Means*, 5 *Strob., L. R.*, 192; *Floyd vs. Floyd*, 3 *Strob., L. R.*, 44; *Woodward vs. Jones*, *Strob., L. R.*, 552; *Turnbull vs. Gibbons*, 2 *Zabriska*, 136-158; *Weir vs. Fitzgerald*, 2 *Bradford*, 42; *Davis vs. Calvert*, 5 *Gill & John.*, 303; *Small vs. Small*, 4 *Greenleaf*, 222; *Harrison's Will*, 1 *B. Monroe*, 351; *Swinburn*, pt. 7, sec. 4, pl. 1; *Bird vs. Bird*, 2 *Haggard*, 142; *Constable vs. Tufnel*, 4 *Haggard*, 485; 1 *Williams on Executors* (2 *Am. ed.*), 37, 39, 40.

That attempts were made to induce the testator to make a will different from what it is, and to change it after it was made, is abundantly proved: but there is no proof whatsoever that any one used the slightest degree of influence to induce him to make it what it is. His own inflexible will had predetermined what it should be; and, with the exception of a small bequest made to Mrs. Jenkins to gratify his father and his mother, it is now what he thus predetermined. The opinions of witnesses, much more those of attorneys, that he was under undue influence, are of no value. The law has wisely fixed the rule, that no inference of undue influence shall be drawn, either from the opportunities the parties may have had to use the influence, or the interest they may have

had in the result. The facts must be proved, and from these the Court must form an opinion. If the rule were otherwise, wives, children and friends, physicians and ministers of spiritual consolation, would all be compelled to desert the chambers of the sick and the dying, or have their motives impugned in Courts of Justice.

One of the conjectures of counsel is, that the testator's spiritual adviser influenced him to make this will. That Mr. Piatt was strongly attached to the Catholic Church, is admitted. That he had great confidence in his spiritual adviser, is admitted. That he consulted him on all questions of conscience, and disclosed to him the secret faults of his life, may be admitted. That he followed his advice in everything that affected his peace of conscience here and his salvation hereafter, may also be admitted. But to suppose that he ever advised with Father Driscoll, or any other priest, as to the management of his worldly affairs, or that any priest was capable of advising him on such subjects, is preposterous folly. His character and capacities, as a business man, are sufficiently developed in the evidence to satisfy any one that, on all subjects of property and the management of secular business, he was capable of teaching all the priests in and about Cincinnati, from Archbishop Purcell down to Father McMahon. That he had confidence in his own judgment is evident from his remarkable powers of the will—his determination to have everything his own way—his refusal to yield to the advice or the importunity of others. Confidence in one's own judgment is what gives force to the will. The sternness of this man's will never forsook him to the last.

But let us look at this matter as developed in the proof. Does the proof warrant the idea that Mr. Piatt consulted priests and followed their advice in the management of his secular affairs?

Mrs. Louise Piatt, on account of some peculiar interest she felt in John's affairs, or from a general disposition to make herself useful in other people's business, wanted to have a hand in making this will. She had heard how it was to be, and, not being satisfied, she beset Mr. Piatt on the subject in her own house, and undertook to surround him by the high functionaries of the Church to compel him to surrender his

own judgment. She says: "I had heard rumors that he was going to make his will and cut John off; and, upon one occasion, just as he was leaving our house, I detained him, and said: I wish, before you make your will, you would consult Archbishop Purcell; and he answered me, either, I have consulted Father Driscol, or, that Father Driscol is my Father Confessor, *I do not recollect which.*" Here was the interference of a busy-body in that which did not concern her, and a most characteristic and appropriate reply—one of those sarcastic remarks with which this sarcastic man might be expected to get rid of troublesome people. With Mr. Piatt, life was too short and time too precious to be spent in idle prating with a woman who had no right to meddle with his affairs, and was not capable of instructing him in business, especially that on which his own judgment was formed long ago. He answered her according to her folly. She advised him to consult *one* priest, on a subject which he had no business with; and he informed her that *another* priest, who had just as little business with it, was his Father Confessor. That which would probably have insulted him, if it had come from a man, he treated as a joke when it came from a woman. He was a rude, sarcastic man, who used no more of ceremony than necessity required, and no more force than was sufficient for the purpose in hand. Like a sturdy bull, who, when he contends with his equal, puts to his horns—but rids himself of a fly by a slash of his tail.

But this lady adds another instance, intended to make the impression that Father Driscol interfered improperly with the making of this will. Speaking of Mr. Piatt, she says: "I heard a conversation between himself and Archbishop Purcell and his mother, in my house, it being on his last visit to Cincinnati. They were urging him to alter his will and make a provision for the education of his younger children, and then to divide the residue of the property between all the children, John and Carrie included. He promised to consider the subject, and said he wished to do what was right. He said he was not leaving the younger children more than he had expended on John's education. He had expended more than \$6,000 already. He regretted that it did not meet the approval of the Archbishop. After the

"Archbishop left, he retired to his room, leaving orders that, "when Father Driscol came (he was expecting him, or had "sent for him—I can not tell which), he should be sent to his "room, as he wanted to see him. He came within an hour "and a half, and remained closeted with him for upward of "two hours—no one disturbing him. After that, I never "heard him speak of the will again, or of his willingness to "change it."

The conclusion she here attempts to draw is, that Mr. Piatt's mother and Archbishop Purcell were, at this time, in a fair way of inducing him to change the will, and would have succeeded, had not Father Driscol come in to advise him the other way. But she has no right, as a logician, to draw such a conclusion from any matters of fact which she states as a witness. First, he had made the Bishop no promise to change the will, but only to consider the matter. Second, he had offered a most cogent reason why it should not be changed, and expressed his regret that it did not meet the Archbishop's approval. Third, Father Driscol did not come there to counteract the Bishop; for Mr. Piatt was expecting him, or had sent for him, before his conversation with the Bishop. Fourth, he had never expressed a "*willingness*" to change the will before Father Driscol came; so that his never speaking of his "*willingness* to change it" after he went away, implies just nothing.

From this last interview detailed by the witness, three inferences only are to be drawn. First, up to this time powerful efforts were being made, through Mrs. Louise Piatt's own chosen agents, to induce the testator to make a different will. Second, the witness, the testator's mother and Archbishop Purcell, considered him in a proper condition of mind to make a will. Third, the testator, true to the instincts of his character, refused to yield his own judgment to that of other people.

Let us turn, for a moment to the testimony of Dunn Piatt upon this point. Speaking of the testator, he says: "Driscol "was his spiritual adviser under circumstances that made "their relationship remarkably intimate. Brother has told "me, frequently, that he referred *all his affairs* to his spiritual "adviser. He believed that all business, all government,

“every thing, should be under control of the Church. * *
 “He told me he was going to burn his library. * * He
 “said he had consulted his spiritual adviser, and he concurred
 “with him, that it was better to burn them up.”

This witness has not told us the “circumstances” which made the “relationship” between the testator and his spiritual adviser so “remarkably intimate.” These are left to conjecture, and that, too, with a mysterious daintiness of expression, as if the witness knew something terrible which, for the credit of his own family, he would not for the world reveal. And, like the preceding witness, he has been unable to state a single instance in which the testator either asked Father Driscoll’s advice, or was influenced by it, in secular matters, except one. He resolved to burn his library, and consulted Father Driscoll, who advised him to burn it up. But did he burn the books, in obedience to this advice? No; there they are to this hour, eighteen hundred in number, without the smell of fire on one of them. The proof shows that he burnt “Hot Corn” and “Rabelais,” books which no man of decency would allow to go into the hands of his children, and which he got only by purchasing books at auction in lots, which he had to overhaul and expurgate, as every other wise man does who buys books in the same way. This, then, the only instance which the witnesses can state, disproves the point. If Father Driscoll advised the burning of the library, and Mr. Piatt did not burn it, it proves him a self-willed, disobedient son, on whom the priest’s advice was thrown away.

Mr. Rairden is called to prove that the testator was entirely under the influence of Catholic priests in the management of his worldly affairs. He shall be heard in his own words: “I
 “have heard him say that he should obey the directions of
 “his priests in anything they should direct him, even if his
 “own opinion should be against them. This was in a mo-
 “ment of controversy, when he had got a little out of humor;
 “*and I did not think he meant what he said.*” No more did Louise or Dunn Piatt think he meant what he said when he made similar expressions to them. They knew perfectly well, that it was impossible that a man whose business was so extensive and so multifarious, should, in the broad, unquali-

fied sense in which Dunn Piatt expresses it, *refer all his affairs* to his spiritual adviser. Whenever this construction is given to the testator's language, the whole idea is involved in unutterable ridicule. You are to contemplate a man of large and diversified property—of extensive and multifarious business, managed with skill and success to the last hour of his life, from day to day addressing his Father Confessor thus:

“Holy Father: it is my opinion that everything should be governed and directed by the Church, and to that end I shall want your advice continually. And I fear me it will require all your time; but you must be patient with me, and keep me from sinning against the Church.

“Holy Father: there is a Judge to be elected in Hamilton county. I have always been a Democrat, and always hated the accursed thing called Americanism. Yet, in view of his experience and ability, I have a preference for Mr. Parker, an Episcopalian and a Know Nothing: is it lawful for me as a Catholic to vote for him?

“Holy Father: I have lawsuits of my own, of my brother Dunn, of my father, and of my clients, which feeble health and the multitude of business will not allow me to attend to. Who would you recommend to me as an attorney? Here is Johnston, a heretic in religion, running to perdition after Methodists and swaddlers: yet I should like to employ him, if it is lawful, and the Church has no objection. What do you say, Holy Father?

“Holy Father: we are out of a family physician now, and I do not wish to employ another without the advice and approbation of the Church. I have a preference for Dr. Wood: but he is a natural born heretic—he and his fathers before him being Quakers. May I lawfully employ him?

“Holy Father: seventeen years ago, before my conversion to the True Church, I patronized and employed Dr. James Taylor as a dentist, and have continued ever since to employ him myself and recommend him to my friends: but he is a heretic and a Presbyterian. Would you require me on that account to dismiss him from my employment, or may I still retain him without violence to the laws of the Church?

“Holy Father: I am about to build a new kitchen and dining room to my house: which will be most in accordance

with the laws of the Holy Mother Church—to build of stone, brick, or wood?

“Holy Father: I shall want a lot of lumber to complete my buildings. Where would you recommend me to purchase, in Lawrenceburg, or Cincinnati? or is it lawful for me to decide, as I used to do, in the days of sin and folly, in favor of the market where I can buy at the lowest price and on the best terms?”

“Holy Father: it is not always convenient for me to send all the way to Cincinnati to purchase a lot of goods. Mr. Parry, of Lawrenceburg, can supply me as well: but he is a heretic in religion, and a Know Nothing in politics. Is it lawful for a Catholic to patronize such a man?”

“Holy Father: I have a great many houses in Cincinnati under rents, and some hard cases for my tenants. I must have a trusty agent to collect my rents and keep my houses in order. Whom shall I employ? I have a son, unfortunately a heretic and a Protestant, who vexes the life out of me going to hear swaddlers preach. Shall I incur the anathemas of the Church if I should employ this youth as my agent?”

All this nonsense, and worse and more of it, is comprehended in the sweeping declaration of Dunn Piatt: “Brother “has told me, frequently, that he *referred all his affairs* to his “spiritual adviser.” What he may have said in jest or irony to get rid of various annoyances, one thing is clear: he did not *refer all his worldly affairs* to Father Driscoll. The thing was both morally and physically impossible. Besides, Driscoll testifies, unequivocally, that he never was consulted by the testator, and never gave him any advice, touching worldly affairs, and did not know any thing about the will till after it was made.

If this will had been the work of Catholic priests, one would be looking for some advantage from it to the Catholic Church. But not one dime is given to the Church or any of its institutions, moral, literary or benevolent. The Church is left to shift for herself, without even being named in the will of a man alleged to have been a monomaniac on the subject of Catholicism. This priest, then, had no more to do with this will than an unborn infant. He could have no rational

motive for interfering in the matter; and his truth and integrity being unimpeached, his own solemn oath, in the absence of all proof on the other side, must put this conjecture to rest forever.

Did any one else exercise undue influence in procuring this will to be made? It was so much and so exclusively the testator's own work, that no one of his friends, or the friends of his wife, was satisfied with it; and, although removed from his wife and all her kindred to the house of his brother, and there beset by the three persons whom he held in veneration above all others—his father, his mother, and the Archbishop of his Church—he persisted to the last in his refusal to change it. If there is any shadow of suspicion left, that the testator was practiced on by priests or others, in his last illness, to induce him to make his will as he did, it is rebutted by the fact that he had long before determined upon the disposition he would make of his property: so that he only carried out in sickness what he had resolved to do in health.

If it is claimed that the wife of the testator practiced undue influence on him in this matter, the first answer is, that the will is not favorable to her. She is carefully excluded from every dime which the law does not give her; and both the trust in the estate and the guardianship of the children are taken out of her hands, in the event of a second marriage. But the proof! Where is the proof that she ever spoke to him, directly or indirectly, on the subject of making a will? Some of the witnesses swear, as a matter of opinion, that she had great influence over him. Doubtless, she had influence over him. Doubtless, she had much to do with forming the better parts of his character. Doubtless, she had much to do with shaping his better destiny. Doubtless, she had much to do with economizing his property and building up his estate. But is there any proof that she ever interfered with the disposition of that estate?

There was much which she might have said with propriety. She might have said: "I found you a poor, heart-broken, desolate young man. Your path through life had already been planted with thorns. For more than twenty years we have trodden that thorny path of life together. Our joys and our sorrows have been mingled in the same cup; and no matter how bitter the draught, I have never asked that it

might pass from my lips, if it was the lot of my husband to drink it. The estate now to be disposed of is neither yours nor mine: it is the joint product of your industry and my economy. What you won by hard labor I saved by close economy. When you toiled all day in Court, or worked all night in your office, I staid at home and superintended the household, or sat by the cradle of our nine infant children, attending to the duties of a wife and a mother. The wives of bankrupts dashed in coaches, and flaunted in balls, concerts, theaters and watering-places, while their husbands struggled with the world, and, struggling, fell: but my coach was never seen dashing through the streets, nor my finery choking the places of fashionable resort. I lived in simplicity and went on foot when I was young, that I might have the means of educating and providing for our children when I should be old. No creditor of yours ever cursed my extravagance as the cause of his losses. Your first marriage was a sunny spot in early life, soon lost in clouds, darkness and storms. Had the object of your first love lived, she would have helped you, as I have done, to build up your fortune: and, in process of time, would have added her own. But she died before she came to her fortune, so that no part of it came to your hands or mine. Whatever it was, it descended directly upon her daughters, and they are provided for. Your second marriage brought you sorrow, disgrace, law-suits and ruin—but not one dime in money. Your earnings and mine were taxed for twenty years for the separate maintenance of this second wife, and the son of this unfortunate marriage. By that son you have done a liberal part, as it was your duty to do. You have educated and prepared him for business, so that he is in better condition to battle with the world than my poor orphans. It is not justice, it is not fairness, that the estate which owes as much to my economy as to your industry, should be equally divided with the children of those who contributed nothing to build it up. Besides, my children are helpless infants, yet to be brought up and educated, and I am to be left to battle with the world without your aid and protection; and larger provision should be made for us than for others.”

All this, and more too, she might have said, without pass-

ing the bounds of truth, or endangering the validity of her husband's will. But she said not one word on the subject of a will—was unwilling to be present when the will was made. She saw the chastening hand of God stretched out over her and her little ones, and in meekness and sorrow she bowed herself to receive the blow. There were about her, from time to time, relatives and connections of her husband, to whom, in his life-time, he stood in the relation of a father and a friend, who had free access to her house, her hearth-stone and her table—as willing witnesses, too, as ever kissed the book in a Court of Justice, straining every shadow into a substance, every jest into sober earnest, every peevish expression of anger into settled and everlasting hatred, every eccentric remark into insanity, every sentiment of religious faith into superstition or monomania: but not one of them pretend to have seen, or heard, or known, this lady, or any of her kindred or friends, to importune her husband on the subject of his will.

A large majority of the witnesses on both sides have not been noticed in this argument, because, first, the testimony of many of them was wholly irrelevant; second, because that of others was unimportant; third, because that of others was cumulative only to such as has been commented upon; and, fourth, because the reasonable limits of an argument would not permit. But their testimony is before the Court, subject to all legal exception, and to be considered according to the rules of law.

If this will should be set aside on the grounds shown by the evidence, the will-making power ought at once to be blotted from the statute book, and no man henceforward be allowed to exercise control over his own property, no matter how strong the claims of justice, of wisdom, of prudence, of humanity, of gratitude may be. Next to this, the Statutes of Descents and Distribution should be abolished; and, as the body of the man returns to the dust from whence it was taken, so let the fruit of all his toil escheat to the world from whence it was gathered.

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